

# **EXHIBIT E**

Stephen M. Factor, M.D.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ATLANTIC COUNTY

- - -  
IN RE: : CIVIL ACTION  
PELVIC MESH/GYNECARE : CASE NO. 291 CT  
LITIGATION :  
: :  
: MASTER CASE NO.  
: L-6341-10

(GENERAL, GROSS, WICKER):

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- - -

NOVEMBER 27, 2012

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Videotaped deposition of  
STEPHEN M. FACTOR, M.D., held at Jacobi  
Medical Center, 1400 Pelham Parkway  
South, Bronx, New York 10464, commencing  
at 2:08 p.m., on the above date, before  
Margaret Peoples, a Registered  
Professional Reporter.

- - -

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1	A P P E A R A N C E S :	
2	MAZIE, SLATER, KATZ & FREEMAN, LLC	1 DEPOSITION SUPPORT INDEX
3	BY: DAVID MAZIE, ESQUIRE	2
4	103 Eisenhower Parkway, 2nd Floor	3 Direction to Witness Not To Answer
	Roseland, New Jersey 07068	4 Page Line Page Line
5	(973) 228-9898	5 None
	Counsel for the Plaintiffs	6
7	BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC	7
8	BY: NILS B. (BURT) SNELL, ESQUIRE	8 Request For Production of Documents
9	Suite 400	9 Page Line Page Line
	500 Office Center Drive	10 None
10	Fort Washington, Pennsylvania 19034	11
11	(267) 513-1885	12 Stipulations
12	Counsel for the Defendants	13 Page Line Page Line
13		14 None
14		15
15		16 Questions Marked
16	A L S O P R E S E N T:	17 Page Line Page Line
17	Christopher Campbell, Videographer	18 None
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19		20
20		21
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1	- - -	1 Reserved for Confidential Designation Index as
2	I N D E X	2 Pursuant to the Protective Order
3	WITNESS PAGE NO.	3
4	STEPHEN M. FACTOR, M.D.	4 Defendants did not have any Confidential Designations
5	By Mr. Mazie 8	5
6	By Mr. Snell 129	6
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10	E X H I B I T S	10
11	NO. DESCRIPTION PAGE NO.	11
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1      Reserved for Confidential Designation Index as 2      Pursuant to the Protective Order 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1      Butler Snow on behalf of the 2      defendants, Ethicon and Johnson & 3      Johnson. 4      VIDEOGRAPHER: The court 5      reporter is Margaret Peoples and 6      will now swear in the witness. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
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1      - - - 2      (Whereupon, Exhibit 1 was 3      marked for identification.) 4 5      VIDEOGRAPHER: We are now on 6      the record. My name is 7      Christopher Campbell. I'm a 8      videographer for Golkow 9      Technologies. Today's date is 10     November 27, 2012 and the time is 11     2:08. 12     This deposition is being 13     held in Bronx, New York, In Re: 14     Pelvic Mesh, for the Superior 15     Court of New Jersey, Atlantic 16     County. 17     The deponent is Dr. Stephen 18     Factor. 19     At this time, will counsel 20     please announce their appearances 21     for the record? 22     MR. MAZIE: David Mazie, 23     Mazie, Slater, Katz & Freemen on 24     behalf of the plaintiffs. 25     MR. SNELL: Burt Snell,	1      A. I don't keep a precise 2      count, but somewhere close to 125 to 150 3      over the last 30-plus years. 4      Q. Over the past 10 years, how 5      many times do you think you have been 6      deposed? 7      A. It's averaged about six to 8      eight a year. 9      Q. And what percentage of your 10     cases in which you have been deposed have 11     been on behalf of the defense versus the 12     plaintiff? 13     A. My breakdown has been about 14     85 percent for defense and 15 percent or 15     so for plaintiff. 16     Q. Have you ever worked in a 17     pharmaceutical-type case? 18     A. Yes. 19     Q. On how many occasions? 20     A. I have done products 21     liability now for 20 years, 15 to 20 22     years. I have testified in virtually 23     none of them, at least with the 24     pharmaceutical cases, but I have been 25     working over that period of time.

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<p>1       Q. How many times have you been 2       retained in a medical device case over 3       the past 20 years?</p> <p>4       A. I've had a long-standing 5       involvement with St. Jude Medical for 6       over 8 to 10 years, leading to testimony 7       last year.</p> <p>8       Q. On how many occasions have 9       you been retained where there was an 10      issue of whether or not a medical device 11      was defective?</p> <p>12      A. That was, I believe, the 13      only medical device case. The other 14      products liability have been drug or -- 15      and even with the products liability, it 16      was primarily -- I was involved mainly 17      with the experimental studies dealing 18      with the device.</p> <p>19      Q. On how many occasions over 20     the past 20 years have you acted as an 21     expert in where there was an issue of 22     whether a drug or medical device was at 23     issue?</p> <p>24      A. I don't keep a precise 25      count, so I don't know.</p>	<p>1       subject. 2       Q. And in every single case in 3       which there's a medical device or drug at 4       issue, and we're talking at least 100, if 5       not more, you have acted as the expert on 6       behalf of the defense, correct? 7       MR. SNELL: Objection to the 8       form. 9       A. Correct, except for one case 10      a number of years ago that I did for 11      plaintiffs in an asbestos litigation. 12      Q. That doesn't involve a 13      medical device or a drug, correct? 14      A. No. Correct. 15      Q. Fair to say in the more than 16      100 cases in which there's been an issue 17      involving a medical device or drug, you 18      have acted as an expert on behalf of 19      defense in every single one of those 20      cases? 21      A. Correct. 22      MR. SNELL: Objection to 23      form. BY MR. MAZIE: Q. And you've never acted as an</p>
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<p>1       Q. Can you estimate for us?</p> <p>2       A. It's, I'd say, between five 3       and ten cases a year over the past 10 4       years.</p> <p>5       Q. And what percentage of those 6       cases in which there was an issue 7       involving the medical device or drug did 8       you testify or were you an expert, 9       rather, on behalf of the plaintiff versus 10      the defense?</p> <p>11      A. They were all for defense.</p> <p>12      Q. Fair to say that -- strike 13      that.</p> <p>14      Can you tell me how many you 15      said per year?</p> <p>16      A. Five to ten.</p> <p>17      Q. So, is it fair to say you 18      have acted as an expert in cases in which 19      there was either a medical device or drug 20      at issue on more than 100 cases?</p> <p>21      MR. SNELL: Objection, form.</p> <p>22      A. I think in total, more 23      likely, yes, because a number of cases 24      dealt with specific issues from 25      individuals dealing with the same</p>	<p>1       expert on behalf of the plaintiff in a 2       case in which there was a medical device 3       or drug at issue, correct? 4       A. Correct. 5       MR. SNELL: Objection to 6       form. BY MR. MAZIE: Q. I'm going to give you some just ground rules, even though you're obviously familiar with them. First of all, you understand you're under oath? A. Correct. Q. You understand that your testimony has the same force and effect as if you were sitting before a judge and jury at this time? A. Yes. Q. If I ask you a question and you answer it, I'm going to presume you understood the question. If you don't understand the question or any part of it, let me know and I'll rephrase it. But if you answer the question, I'm going to presume you understood it. Okay? A. Yes.</p>

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1       Q. Obviously, don't speculate, 2       don't guess. If you know something, you 3       will tell us that. Okay? 4       A. Yes. 5       Q. Doctor, are you affiliated 6       with any type of expert organization that 7       advertises your services? 8       A. None whatsoever. 9       Q. Do you advertise your 10      services? 11      A. Absolutely not. 12      Q. Have you worked with Butler 13      Snow or any of its attorney in the past? 14      A. I have worked with Mr. Snell 15      once. I don't recall whether he was at 16      Butler Snow at the time, but I have 17      worked with him. 18      Q. And what type of case did 19      you work with Mr. Snell? 20      A. It was a Phen-fen case. 21      Q. And did you actually testify 22      at a deposition in the Phen-fen case? 23      A. Not that I recall. 24      Q. And aside from that one 25      occasion with Mr. Snell, have you ever	1       A. I don't know. 2       Q. Fair to say that you have 3       worked as an expert on behalf of Johnson 4       & Johnson between 10 and 20 times? 5       A. By definition. 6       Q. Is that correct? 7       A. Yes. 8       Q. Doctor, you have privileges 9       at Jacobi Medical Center? 10      A. Yes, I do. 11      Q. Do you have privileges 12      anywhere else? 13      A. I don't know if I have 14      active privileges at Montefiore. I don't 15      think I do anymore. 16      Q. You don't hold any positions 17      at Montefiore? 18      A. Correct. 19      Q. What positions do you hold 20      at Jacobi Medical Center? 21      A. I'm chairman of the 22      department of pathology. 23      Q. Any other positions? 24      A. I'm director of anatomic 25      pathology as well as chairman.
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1       worked with him or anyone at his firm? 2       A. Not to my recollection. 3       Q. Never worked with Christie 4       Jones? 5       A. No. 6       Q. Have you ever worked as an 7       expert or been retained as an expert on 8       behalf of Ethicon, Johnson & Johnson or 9       any of the affiliated entities with 10      Johnson & Johnson? 11      A. Johnson & Johnson, yes, not 12      Ethicon. 13      Q. On how many occasions have 14      you acted as an expert for Johnson & 15      Johnson? 16      A. I don't know the number, but 17      it's -- they were all drug cases and I 18      would be guessing. I don't know. 19      Q. Have you worked as an expert 20      on behalf of Johnson & Johnson more than 21      ten times? 22      A. Yes. 23      Q. Have you worked as an expert 24      on behalf of Johnson & Johnson more than 25      25 times?	1       Q. Are those all of your 2       positions at this hospital? 3       A. At the hospital, yes. 4       Q. Do you have any positions 5       with any professional organizations? 6       A. Well, I'm -- I have 7       positions at the medical school. I, 8       also, belong to a number of organizations 9       where I have had positions and still have 10      some degree of active positions. 11      Q. What medical school are we 12      speaking about? 13      A. Albert Einstein College of 14      Medicine. 15      Q. What is your position there? 16      A. I'm a tenure full professor 17      of pathology of medicine. 18      Q. Do you have a subspecialty 19      in pathology? 20      A. Yes, I do. 21      Q. What is that? 22      A. Cardiovascular pathology. 23      Q. You are not a urogynecologic 24      pathologist, correct? 25      A. That is correct.

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<p>1                   MR. SNELL: Object to form.      2 BY MR. MAZIE:      3                   Q. What is the difference      4 between a urogynecologic pathologist and      5 a cardiologic pathologist?      6                   A. Well, it has to do not so      7 much with day to day examination of      8 tissues. It has to do with, in my case      9 at least, with my research and the bulk      10 of my writing has dealt with      11 cardiovascular disease of all aspects      12 and, also, my teaching deals with      13 cardiovascular disease. I see      14 urogynecologic specimens all the time as      15 part of my surgical pathology experience,      16 but I'm not a urogynecologic pathologist.      17                   Q. What percentage of the time      18 do you examine urogynecologic specimens?      19                   A. There's no way to calculate      20 that. I sign out surgical specimens on a      21 daily basis. I sign out cytology,      22 generally, on a daily basis. And even      23 the cases that I don't actually -- that      24 I'm not actually responsible for, I see      25 along with my staff during a daily peer</p>	<p>1                   A. I was trying to estimate. I      2 would say yearly I see between eight and      3 ten mesh cases from abdominal ventral      4 hernias and inguinal hernias. I, also,      5 see significantly more vascular grafts      6 with -- usually with GORE-TEX as the      7 material used. And, occasionally, I see      8 particularly at autopsy, vascular grafts      9 from large vessels.      10                  Q. If you take GORE-TEX out of      11 the mix, how often do you see any other      12 type of surgical mesh?      13                  A. Well, it's EIGHT to ten      14 hernia cases. And that's -- and other      15 than that, the Dacron used for vascular      16 grafts.      17                  Q. What the hernia mesh made of      18 that you see?      19                  A. Most often, it's, to my      20 knowledge, it's polypropylene, but I      21 don't know that all of them include that.      22                  Q. Doctor, you're board      23 certified?      24                  A. Yes, I am.      25                  Q. And in what discipline?</p>
<p>1 review conference.      2                  Q. So you can't estimate for me      3 and for this jury what percentage of the      4 time that you actually examine      5 urogynecologic specimens?      6                  A. Absolutely not. There's --      7 I mean, we receive specimens on a daily      8 basis. The gynecologists tend to operate      9 or oncologic gynecologic surgeons operate      10 one day a week, but our other      11 gynecologists operate daily and we      12 receive specimens virtually every day.      13                  Q. In your professional      14 practice outside of this particular case,      15 how many times have you reviewed or      16 examined any type of transvaginal mesh      17 from a pathologist standpoint?      18                  A. None that I can recall.      19                  Q. And aside from transvaginal      20 mesh, how often do you actually -- strike      21 that.      22                  In your work as a      23 pathologist, how often do you actually      24 examine specimens involving any type of      25 mesh or any type of mesh, surgical mesh?</p>	<p>1                  A. Anatomic and clinical      2 pathology.      3                  Q. You were board certified in      4 1995?      5                  A. Correct.      6                  Q. Did you have to take both      7 oral and written boards?      8                  A. It was written and I believe      9 a portion of the anatomic boards were      10 oral at that time, yes.      11                  Q. Did you pass your written      12 and oral boards on the first try?      13                  A. Yes.      14                  Q. Have your privileges in any      15 hospital ever been suspended or revoked?      16                  A. No.      17                  Q. Have you ever been -- strike      18 that.      19                  Has anyone ever filed a      20 complaint against you with the Board of      21 Medical Examiners or any other      22 organizations?      23                  A. No.      24                  MR. SNELL: Form.      25                  BY MR. MAZIE:</p>
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<p>1       Q. Have you ever been sued for 2 malpractice?</p> <p>3       A. I was named in a suit that I 4 had nothing to do with, just as the 5 chairman of the department and then I was 6 subsequently dropped.</p> <p>7       Q. Just once?</p> <p>8       A. To my knowledge, yes.</p> <p>9       Q. Have you ever written any 10 articles involving mesh?</p> <p>11      A. No.</p> <p>12      Q. Mesh of any sort?</p> <p>13      A. No.</p> <p>14      Q. Have you ever given any 15 presentations concerning mesh, surgical 16 mesh?</p> <p>17      A. No.</p> <p>18      Q. Have you ever studied 19 surgical mesh?</p> <p>20       MR. SNELL: Objection to 21 form.</p> <p>22      A. I don't recall because I 23 have done studies with my surgical 24 colleagues, my cardiac surgical 25 colleagues and whether or not they used</p>	<p>1 pathology slides that I have to do here 2 in the office, but most of the remaining 3 work is done at night and weekends.</p> <p>4       Q. How many cases do you 5 currently have for J&amp;J?</p> <p>6       A. None that I recall. They're 7 still active. There may be one or two 8 out there, but I don't know.</p> <p>9       Q. Can you estimate for me over 10 the past 10 years how much money J&amp;J has 11 paid you for expert work?</p> <p>12      A. I have no idea.</p> <p>13      Q. What are you being paid on 14 an hourly basis for this case?</p> <p>15      A. \$500 an hour.</p> <p>16      Q. Do you know how much you 17 have been paid to date?</p> <p>18      A. Yes.</p> <p>19      Q. How much?</p> <p>20      A. 21,000.</p> <p>21      Q. Doctor, you have issued one 22 report in this case?</p> <p>23      A. Correct.</p> <p>24      Q. Linda Gross?</p> <p>25      A. Correct.</p>
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<p>1 any mesh materials in those studies, I 2 don't recall whether it did or not.</p> <p>3       Q. As you sit here today, you 4 can't recall any presentations you have 5 given on surgical mesh?</p> <p>6       A. To my knowledge, I haven't 7 given any presentations.</p> <p>8       Q. To your knowledge, you have 9 never done any research on surgical mesh, 10 correct?</p> <p>11      A. Correct.</p> <p>12      Q. Doctor, what percentage of 13 your income over the past 10 years has 14 been as a result of medical-legal expert 15 work?</p> <p>16      A. It's averaged between 25 and 17 40 percent.</p> <p>18      Q. What percentage of your time 19 over the past 10 years has been as a 20 result of medical-legal expert work?</p> <p>21      A. It's difficult to total. In 22 general, with all cases, between 10 to 20 23 hours a week, but not every week. And 24 usually that's during evenings and 25 weekends, other than actually reviewing</p>	<p>1       Q. That would be dated October 2 9, 2012?</p> <p>3      A. Yes.</p> <p>4      Q. And does this report contain 5 all of your opinions in the case?</p> <p>6      A. To date, yes.</p> <p>7      Q. What do you mean to date?</p> <p>8      A. Well, if additional 9 information becomes available, I might be 10 asked to write a supplement, but I 11 haven't done so as of yet.</p> <p>12      Q. As of right now, these are 13 all the opinions you have in the case, 14 correct?</p> <p>15      A. Right.</p> <p>16      Q. And let me ask you, is it 17 fair to say that mesh when it's placed in 18 the human body elicits a foreign body -- 19 I'm sorry. Is it fair to say that when 20 mesh is placed into the human body 21 provokes inflammation?</p> <p>22      A. Yes.</p> <p>23      Q. And explain to us how that 24 works?</p> <p>25      A. The mesh is recognized as a</p>

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<p>1 foreign material and it elicits an      2 inflammatory response, which is --      3 includes changes comparable to wound      4 healing with the development of      5 granulation tissue, the laying down of      6 fibrosis, the development of      7 neovasculature. And along with that, it      8 elicits an inflammatory response. And      9 that includes the reaction of mononuclear      10 cells, monocytes that are altered into      11 macrophages and then ultimately, in some      12 cases, multinuclear giant, foreign body      13 type giant cells, along with lymphocytes      14 and rarely eosinophils or mass cells.</p> <p>15 Q. And as you sit here today,      16 do you know how much mesh was placed in      17 Linda Gross?</p> <p>18 A. How much volumetrically?</p> <p>19 Q. Yes.</p> <p>20 A. I don't know.</p> <p>21 Q. If you took each fiber and      22 stretched it out, do you know how much      23 distance that would be?</p> <p>24 A. I have no idea.</p> <p>25 Q. In your review of the</p>	<p>1 natural tissue, as well as in response to      2 injury.</p> <p>3 Q. Doctor, you've reviewed a      4 number of slides with regard to Linda      5 Gross, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Can you tell me how many      8 slides?</p> <p>9 A. I have to total them up.      There were 19 slides, but then      subsequently I saw a second set, one      initially with the plaintiff's slides and      then I saw a set of defense slides. And      there were, also, some blanks in there.      So, my -- as best as I can tell from my      report, and I didn't quantify them, but      just going by the number of cases, the      number of accession cases and the number      of slides listed with those cases, I      believe there are 19.</p> <p>21 Q. 19 pieces of tissue were      22 examined by you?</p> <p>23 A. There may be even more      tissue on one slide, but 19 slides.</p> <p>24 Q. Can you estimate for me how</p>
<p>1 pathology slides for Linda Gross, you saw      2 lymphocytes?</p> <p>3 A. Yes.</p> <p>4 Q. You saw macrophages?</p> <p>5 A. Yes.</p> <p>6 Q. Did you see giant cells?</p> <p>7 A. I saw some, yes.</p> <p>8 Q. Did you see fibroblasts?</p> <p>9 A. Yes.</p> <p>10 Q. Did you see scar tissue?</p> <p>11 A. There was fibrosis, yes.</p> <p>12 Q. And how is fibrosis formed?</p> <p>13 A. Fibrosis is the response of      the body again to healing with the      development of granulation tissue which      includes fibroblasts and endothelia cells      and buds of endothelia cells forming new      vessels. The fibroblasts secrete      procollagen, which polymerizes and then      initially develops a matrix of type three      collagen, which is also called reticulin,      and then over the course of days and      weeks and months, leads to the      development of type one collagen, which      is the typical collagen present in</p>	<p>1 many pieces of tissue you actually      2 examined?</p> <p>3 A. I can't tell you that.</p> <p>4 Q. Approximately.</p> <p>5 A. I have no idea. It's,      approximately, 19. But whether any one      slide had two separate pieces of tissue,      I can't tell.</p> <p>6 Q. From how many operations --      strike that.</p> <p>7 The, approximately, 19      8 slides that you examined, how many      9 different sources did they come from?      10 And what I'm asking about sources,      11 sources within Linda Gross' body.</p> <p>12 A. Well, this is separate      13 accessioned tissues that are from the      14 gynecologic track, as well as elsewhere,      15 but total is the total number of      16 accession cases.</p> <p>17 Q. And from how many operations      18 did those slides come from?</p> <p>19 A. By my count, eight.</p> <p>20 Q. Do you know how many      21 operations Linda Gross has had?</p>

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<p>1       A. I believe 18.</p> <p>2       Q. As you sit here today, can</p> <p>3       you tell us those areas of Linda Gross'</p> <p>4       body, those tissue samples came from that</p> <p>5       you examined in this case?</p> <p>6       A. I can go by what or how they</p> <p>7       are labeled or how they were identified.</p> <p>8       One was rectovaginal mass. One was left</p> <p>9       posterior vagina, right posterior vagina.</p> <p>10      Another was large bowel biopsy, upper</p> <p>11      posterior vagina and ischial spine. It</p> <p>12      wasn't identified as the left or right.</p> <p>13      And then a separate one from left ischial</p> <p>14      spine, a separate one from soft tissue</p> <p>15      left buttock. Another one from left</p> <p>16      buttock. Another from fallopian tubes</p> <p>17      and another from retropubic mass.</p> <p>18      Q. Doctor, is it fair to say in</p> <p>19      those areas where you did not examine any</p> <p>20      tissue samples you have no opinion as to</p> <p>21      whether and to what extent there was any</p> <p>22      type of inflammation or fibrosis?</p> <p>23      A. Correct.</p> <p>24      Q. Doctor, is it fair to say</p> <p>25      that wherever the mesh is --</p>	<p>1       cases, the accession cases I, also,</p> <p>2       reviewed other slides.</p> <p>3       Q. So your answer has to do</p> <p>4       with two questions ago. Let's make sure.</p> <p>5       Is that correct?</p> <p>6       A. I believe I said there were</p> <p>7       eight accession cases and I listed those</p> <p>8       eight. There are additional other slides</p> <p>9       from the defense set of slides that I,</p> <p>10      also, reviewed that were not included</p> <p>11      with the plaintiff's slides.</p> <p>12      Q. Do you have a list of what</p> <p>13      those --</p> <p>14      A. Yes. That includes the</p> <p>15      cervix and uterus, it includes the</p> <p>16      gallbladder, it includes hemorrhoids, and</p> <p>17      that's it.</p> <p>18      Q. Okay. And just so the</p> <p>19      record is clear, aside from what the</p> <p>20      slides you looked at, whether they be</p> <p>21      from the plaintiff or the defense, you</p> <p>22      have no opinion as to those other areas</p> <p>23      of Linda Gross' body and what was</p> <p>24      transpiring within those other parts of</p> <p>25      her body?</p>
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<p>1       A. Can I add something?</p> <p>2       Q. Sure.</p> <p>3       A. Because in the defense</p> <p>4       slides, there were other tissues that</p> <p>5       were not included with the plaintiff's</p> <p>6       slides.</p> <p>7       Q. I'm talking about any slides</p> <p>8       you've reviewed.</p> <p>9       A. Okay.</p> <p>10      Q. Just so we're clear, you</p> <p>11      have no opinions on what is going on any</p> <p>12      part of Linda Gross' body aside from what</p> <p>13      you saw on those particular tissue -- s?</p> <p>14      A. No.</p> <p>15      Q. -- samples?</p> <p>16      MR. SNELL: Object to form.</p> <p>17      A. But the ones I've identified</p> <p>18      for you were from the plaintiff's slide I</p> <p>19      initially reviewed and then I</p> <p>20      subsequently reviewed similar tissues</p> <p>21      from the plaintiff, but I, also reviewed</p> <p>22      others that were not included with the</p> <p>23      plaintiff's slides.</p> <p>24      Q. In addition to the 19 or?</p> <p>25      A. In addition to the number of</p>	<p>1       A. Correct.</p> <p>2       Q. So whether or not there's</p> <p>3       inflammation, fibrosis or anything else</p> <p>4       going on in her body, if you didn't</p> <p>5       examine a tissue slide relating to it,</p> <p>6       you have no opinion on it?</p> <p>7       A. Correct.</p> <p>8       Q. And the -- just so I'm</p> <p>9       clear, is it fair to say that any time</p> <p>10      there is mesh, the tissue next to the</p> <p>11      mesh has inflammation or becomes</p> <p>12      inflamed?</p> <p>13      MR. SNELL: Objection to</p> <p>14      form.</p> <p>15      A. Not universally, no. There</p> <p>16      are areas even in these slides that show</p> <p>17      mesh without inflammation or without any</p> <p>18      meaningful inflammation.</p> <p>19      Q. Are you going to be</p> <p>20      rendering an opinion in this case --</p> <p>21      strike that.</p> <p>22      Is it fair to say that the</p> <p>23      majority of the time where mesh is</p> <p>24      touching tissue it will cause</p> <p>25      inflammation in that tissue?</p>

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<p>1           MR. SNELL: Objection to 2       form. 3       A. It's variable. The 4       inflammation that's present in some areas 5       is obvious and in other areas, there's 6       virtually no inflammation. Or if there's 7       inflammation, it may be associated -- or 8       it is associated with other findings, 9       including the presence of hemosiderin. 10      Q. What is the significant of 11     the presence of hemosiderin? 12      A. It's a natural response or 13     natural result from surgery during the 14     course of surgery regardless of what the 15     surgical procedure is, there is 16     disruption of blood vessels bleeding into 17     the tissue and then the blood breaks 18     down, the hemoglobin is released from the 19     red cells and turns in to hemosiderin 20     which elicits an inflammatory response. 21      Q. How long does it take for 22     hemosiderin to form? 23      A. Within four to seven days, 24     you see hemosiderin in the tissue. 25      Q. So if hemosiderin is shown</p>	<p>1       doesn't change at all from that moment 2       on. 3       Q. You said it takes four to 4       seven days for hemosiderin to form. 5       A. Once you get bleeding in the 6       tissue, from the surgical procedure, you 7       will develop breakdown of the red cells 8       and the development of hemosiderin. So, 9       obviously, the hemosiderin is not for the 10      surgical procedure that was done at the 11      time of the resection, it was done -- or 12      is associated with procedures that were 13      antecedent to the procedure. 14      Q. That was my point. I want 15     to make sure we were on the same page. 16      So, if a tissue sample shows 17     hemosiderin, that relates to a prior 18     procedure? 19      A. Correct. 20      Q. And so you are not giving 21     any opinion in this case as to how often 22     mesh causes inflammation in the tissue? 23      MR. SNELL: Objection to 24     form. 25      A. All I said was that the</p>
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<p>1       on some of these pathology slides, as it 2       relates to the actual operation from 3       which the tissue was taken or a prior 4       operation? 5       A. There's no way to determine 6       that other than the immediacy of the 7       hemosiderin to the tissue that's being 8       resected at the time. Whether it was 9       there prior to that, it's unlikely, but 10      theoretically it's possible. Hemosiderin 11      persists in the tissue, essentially, 12      forever. 13      Q. Well, I'm trying to 14     understand. So if there's an operation 15     and they take a piece of tissue to send 16     to pathology, does hemosiderin continue 17     to form from that point forward? 18      A. Hemosiderin -- you mean once 19     the tissue is out of the body? 20      Q. Yes. 21      A. No. 22      Q. So, once the tissue is taken 23     out of the body, it's then sent to 24     pathology, correct? 25      A. Sent in fixative. It</p>	<p>1       inflammation associated with the mesh is 2       variable. There are areas with virtually 3       no inflammation and that are areas with 4       more obvious inflammation. 5       Q. My question is, you are not 6       giving an opinion in this case on a 7       global scale as to how often the Prolift 8       mesh will cause inflammation in the 9       adjoining tissues? 10      A. I don't understand the 11     question. 12      MR. SNELL: Object to form. 13      BY MR. MAZIE: 14      Q. Okay. Well, you're giving 15     opinions in this case in the tissue 16     samples you examined, correct? 17      A. Correct. 18      Q. Beyond those tissue samples, 19     there's an overall question I'm asking 20     you. And that is, whether you're giving 21     an opinion as to how often and to what 22     extent the Prolift mesh will cause 23     inflammation in the patient's tissues. 24      A. You are talking about -- 25      MR. SNELL: Objection to</p>

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<p>1       form.</p> <p>2       Q. Global?</p> <p>3       A. -- global patient's tissues.</p> <p>4       The answer is, no.</p> <p>5       Q. You are not giving that</p> <p>6       opinion?</p> <p>7       A. No.</p> <p>8       Q. Doctor, were there is</p> <p>9       inflammation, will that inflammation</p> <p>10      inflame nerves?</p> <p>11      A. Say that again.</p> <p>12      Q. Where you do have a</p> <p>13      situation where the mesh causes</p> <p>14      inflammation, will the inflammation to</p> <p>15      the extent there's nerves there, inflame</p> <p>16      the nerves?</p> <p>17      MR. SNELL: Objection to</p> <p>18      form.</p> <p>19      A. Only if one identifies</p> <p>20      evidence of neural involvement by</p> <p>21      inflammation, which I did not.</p> <p>22      Q. I'm asking you</p> <p>23      theoretically.</p> <p>24      A. Theoretically, if you have</p> <p>25      nerves and tissue and you have</p>	<p>1       have identified that were present after</p> <p>2       being removed from her. In none of those</p> <p>3       nerves was there evidence of significant</p> <p>4       inflammation of nerves.</p> <p>5       Q. You don't know what went on</p> <p>6       or what is going on in the rest of her</p> <p>7       nerves or the rest of her tissues because</p> <p>8       you didn't examine them, correct?</p> <p>9       MR. SNELL: Objection to</p> <p>10      form.</p> <p>11      A. Well, that's a theoretical</p> <p>12      and, essentially, absurd comment.</p> <p>13      There's no way to know that without a</p> <p>14      biopsy, without knowing in other sites</p> <p>15      what is happening to nerves. There's</p> <p>16      no -- absolutely no scientific or</p> <p>17      otherwise way to know that.</p> <p>18      Q. And I asked you</p> <p>19      hypothetically if you have a situation</p> <p>20      where there's inflammation, can that</p> <p>21      cause inflamed nerves. And you called it</p> <p>22      neuritis.</p> <p>23      MR. SNELL: Objection to</p> <p>24      form.</p> <p>25      A. I said, theoretically, one</p>
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<p>1       inflammation, you can theoretically</p> <p>2       develop a neuritis, an inflammatory</p> <p>3       process involving nerves for any surgical</p> <p>4       procedure, regardless of what the</p> <p>5       procedure is and regardless of whether</p> <p>6       you use foreign material.</p> <p>7       Q. But my question is, if you</p> <p>8       have a situation where the Prolift mesh</p> <p>9       is causing inflammation and there's</p> <p>10      nerves within that tissue, is it fair to</p> <p>11      say that can inflame the nerves?</p> <p>12      MR. SNELL: Objection to</p> <p>13      form.</p> <p>14      A. Theoretically, if one sees</p> <p>15      it. But, if it's not seen, I can't</p> <p>16      answer in the global because we're not</p> <p>17      talking about the global picture. I'm</p> <p>18      talking about Mrs. Gross. And in that</p> <p>19      case, there is no inflammation of nerves,</p> <p>20      so I comment further than that.</p> <p>21      Q. You don't know what -- you</p> <p>22      didn't examine every nerve in every part</p> <p>23      of Mrs. Gross' pelvic area, correct?</p> <p>24      A. I examined the nerves that</p> <p>25      were present in all of the tissues that I</p>	<p>1       could have inflammation causing a</p> <p>2       neuritis, but one has to demonstrate it</p> <p>3       to make the diagnosis of neuritis.</p> <p>4       Q. Doctor, how would you</p> <p>5       characterize the inflammation that you</p> <p>6       saw within the tissue slides?</p> <p>7       A. As I indicated earlier, it</p> <p>8       was variable. There were areas with</p> <p>9       virtually no inflammation or very mild</p> <p>10      inflammation. There were areas with</p> <p>11      inflammation, particularly in the</p> <p>12      pictures that I saw today, areas</p> <p>13      predominantly associated with the</p> <p>14      presence of hemosiderin in the tissue.</p> <p>15      And there were a few areas where the</p> <p>16      inflammation was more significant.</p> <p>17      If taking the entire samples</p> <p>18      of tissue with it and without mesh --</p> <p>19      and, also, by the way, there's fat</p> <p>20      necrosis which causes inflammation,</p> <p>21      taking all that together, I would say the</p> <p>22      overall picture is one of mild to minimal</p> <p>23      in some cases inflammation.</p> <p>24      Q. And in some instances, is</p> <p>25      the inflammation that you saw more</p>

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<p>1      severe?</p> <p>2      A. In a few areas, the</p> <p>3      inflammatory response is more active. I</p> <p>4      don't know that I could quantify it as</p> <p>5      severe. If one is to do this from a</p> <p>6      scientific perspective, one would</p> <p>7      actually want to know the entire picture</p> <p>8      of inflammation. This is not a</p> <p>9      picture -- the tissues do not show a</p> <p>10     picture of severe inflammation</p> <p>11     throughout. There are few areas where</p> <p>12     the inflammatory response is more active</p> <p>13     and a few other areas where the</p> <p>14     inflammatory response is more active, but</p> <p>15     explained by other things, such as, as I</p> <p>16     said, hemosiderin or fat necrosis.</p> <p>17     Q. Doctor, does the -- when</p> <p>18     there's inflammation, does inflammation</p> <p>19     remain or does it then change into</p> <p>20     fibrosis?</p> <p>21     A. Inflammation and fibrosis</p> <p>22     are two separate processes. They go</p> <p>23     together to a certain extent, but the</p> <p>24     fibrosis is a response, as I indicated</p> <p>25     before, to wound healing, granulation</p>	<p>1      Q. Doctor, do you have an</p> <p>2      opinion as to what the cause of the</p> <p>3      fibrosis is that you saw within Ms.</p> <p>4      Gross' body?</p> <p>5      A. It's the normal response</p> <p>6      to -- that falls under the broad category</p> <p>7      of wound healing with -- as I said</p> <p>8      before, granulation tissue, laying down</p> <p>9      of collagen. And together with that,</p> <p>10     there's a macrophage response that in</p> <p>11     some areas is associated with the mesh or</p> <p>12     in some areas is associated with other</p> <p>13     phenomenon going on in the tissues.</p> <p>14     Q. Doctor, are you rendering an</p> <p>15     opinion in this case as to how mesh works</p> <p>16     within the female body?</p> <p>17     A. No.</p> <p>18     Q. Do you have an understanding</p> <p>19     of how the mesh is intended to work</p> <p>20     within the female body?</p> <p>21     A. Only in very broad senses.</p> <p>22     I mean, I'm not a bioengineer or</p> <p>23     mechanical engineer. I understand the</p> <p>24     general concept of support of the</p> <p>25     tissues, but I'm not here as an expert in</p>
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<p>1      tissue, laying down of collagen.</p> <p>2      Inflammation is, initially, associated</p> <p>3      with the macrophage and giant cell</p> <p>4      inflammation associated with foreign</p> <p>5      material, foreign bodies and that</p> <p>6      includes hemosiderin and fat necrosis,</p> <p>7      generally persists for long periods of</p> <p>8      time, sometimes as long as one can track</p> <p>9      the process, but it is not --</p> <p>10     inflammation and fibrosis go together but</p> <p>11     not directly.</p> <p>12     Q. Is it fair -- strike that.</p> <p>13     Are you saying that</p> <p>14     inflammation does not cause fibrosis?</p> <p>15     A. Well, depends what the</p> <p>16     inflammation is. If you have an abscess</p> <p>17     in the tissue due to infection, obviously</p> <p>18     you're going to get fibrosis as a result.</p> <p>19     But inflammation, per se, if it damages</p> <p>20     structures, if it damages the heart</p> <p>21     muscle, you will get fibrosis as a</p> <p>22     response to that. But when you're</p> <p>23     dealing with tissues, as we are in this</p> <p>24     case, the inflammation, per se, is not</p> <p>25     the cause of the fibrosis.</p>	<p>1      that area.</p> <p>2      Q. Doctor, do you have an</p> <p>3      understanding that the mesh is intended</p> <p>4      to have scar tissue form within it?</p> <p>5      A. Yes.</p> <p>6      Q. And did you see fibrosis or</p> <p>7      scar tissue form within the pieces of</p> <p>8      mesh that you saw on the slides?</p> <p>9      MR. SNELL: Objection to</p> <p>10     form. Can you read that question</p> <p>11     back, actually?</p> <p>12     - - -</p> <p>13     (Whereupon, the requested</p> <p>14     portion was read.)</p> <p>15     - - -</p> <p>16     MR. SNELL: My objection</p> <p>17     holds.</p> <p>18     THE WITNESS: There is</p> <p>19     fibrosis in the tissue associated</p> <p>20     with the mesh.</p> <p>21     BY MR. MAZIE:</p> <p>22     Q. I'm not sure if I understand</p> <p>23     your answer. There's fibrosis in the</p> <p>24     tissue associated with the mesh. What</p> <p>25     does that mean?</p>

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<p>1           A. Well, it's -- one of the      2 problems in dealing with tissues from the      3 vaginal wall is that the vagina is      4 fibrous tissue surfaced by mucosa. And      5 so, attempting to quantify the degree of      6 fibrosis in the tissue is very difficult.      7 One can see fibrous tissue surrounding      8 mesh fibers. One can see fibrous tissue      9 in areas of other damage, including fat      10 necrosis and hemosiderin deposition, but      11 to attempt to quantify it when you have a      12 background of fibrosis is very difficult.      13 There's no one way to pick out the      14 fibrous tissue that formed as discrete      15 scar related to the mesh from the tissue      16 that's normally present in the vaginal      17 stroma. There is fibrous tissue around      18 mesh fibers and, presumably, that's      19 fibrous tissue that formed as a response      20 to the mesh.</p> <p>21          Q. Fair to say -- first of all,      22 let me back up. Are you rendering any      23 opinions in this case as to what the      24 cause was of the fibrous tissue or the      25 fibrosis that you visualized on any of</p>	<p>1           form.      2          A. You are asking, am I going      3 to or not going to?      4          Q. Are you going to -- do you      5 have -- let me ask it this way. Do you      6 have any opinions in this case as to what      7 the specific cause was of any of the      8 fibrosis that you saw in any of the      9 slides?</p> <p>10         A. Yes.      11         MR. SNELL: Objection to      12 form.      13         THE WITNESS: I said before,      14 it formed in response to the mesh,      15 it formed in response to other      16 injuries in the tissue.</p> <p>17         BY MR. MAZIE:      18         Q. I understand that those are      19 the things that can cause the fibrosis.      20 My question to you is, are you going to      21 be able to look at fibrosis and say this      22 actual fibrosis here is as a result of      23 mesh, or this fibrosis is not the result      24 of mesh, it's a result of something else?      25         MR. SNELL: Objection TO</p>
<p>1           these slides?</p> <p>2          A. It's a response to the      3 surgery. It's a response to the presence      4 of mesh. It's a response to the other      5 phenomenon that were present in the      6 tissue, including bleeding and fat      7 necrosis.</p> <p>8          Q. Are you rendering an opinion      9 in this case as to whether and to what      10 extent any of the fibrosis that you saw      11 on the slides was the result of mesh      12 versus something else?</p> <p>13         A. As I just indicated, there      14 is evidence of fibrous tissue associated      15 with the mesh fibers. To quantify that      16 or to separate that from the surrounding      17 fibrous tissue, in my opinion, is very      18 difficult, if not impossible.</p> <p>19         Q. So you are not going to tell      20 this jury at trial when showing a piece      21 of -- or a slide that shows fibrosis      22 whether that fibrosis comes from the mesh      23 or whether it's comes from something      24 else?</p> <p>25         MR. SNELL: Objection to</p>	<p>1           form. Are you taking about like      2 every strand of fibrosis, every      3 strand of fiber?      4         MR. MAZIE: Yes, any of      5 them. Any of them.      6         MR. SNELL: Object to form,      7 I mean --      8         THE WITNESS: All that I can      9 do and I think any examiner can do      10 is to assess the presence of      11 fibrous tissue in its immediate      12 environment. Mesh fibers are      13 present. There is fibrous tissue      14 around -- between mesh fibers and      15 presumably that the mesh fiber      16 elicited the collagen deposition      17 of fibrosis. There are other      18 areas, as I said before, with fat      19 necrosis and with hemosiderin      20 that, also, are within an area of      21 fibrosis and presumably that      22 fibrosis was associated with those      23 changes. But to try and quantify      24 the extent of the fibrosis that's      25 present related to any one of</p>

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<p>1        those processes, I believe, is not 2        possible. 3        BY MR. MAZIE: 4        Q. Doctor, are you going to be 5        rendering any opinions in this case on 6        mesh contraction? 7        A. No. 8        Q. Doctor, are you going to be 9        rendering any opinions on the size of the 10      mesh pores? 11      A. No. 12      Q. Doctor, are you going to be 13      rendering any opinions in this case on 14      whether a scar net formed or scar bridge? 15      A. Well, I didn't see anything 16      that was -- that could be, at least in my 17      understanding of scar bridges, that could 18      be interpreted as a scar bridge. There 19      was -- as I said, there was fibrous 20      tissue in the tissues, there were mesh 21      fibers and there were the other changes 22      that I indicated. There was nothing that 23      I could identify as a bridge. 24      Q. Are you rendering an opinion 25      in this case that there was no scar</p>	<p>1        say it more simply. 2        Do you have an understanding 3        of how the mesh changes, if at all, once 4        it's surgically placed into the body? 5        A. Are you asking about 6        degradation of the mesh? 7        Q. I'm asking you about about 8        degradation. I'm asking you whether it 9        contracts. I'm asking you whether it 10      becomes brittle or hard. I'm asking any 11      of those things? 12      MR. SNELL: Let me object to 13      the form. Are you talking Prolift 14      mesh? 15      BY MR. MAZIE: 16      Q. Prolift mesh, of course. 17      A. I see no evidence of 18      degeneration. I see no evidence, in my 19      experience of polypropylene, ever 20      undergoing degeneration of tissues. It 21      persists for years in a state comparable 22      to the way when it is placed in the body. 23      I see that in vascular specimens for 24      years. And I see nothing in these 25      tissues, other than the disruptions</p>
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<p>1        bridge or scar net formed anywhere within 2        Linda Gross' body? 3        A. Well, I didn't see 4        everywhere within Linda Gross' body. All 5        I saw was the tissues that I indicated 6        before. In those tissues, I see nothing 7        that indicates the presence of a bridge. 8        And if I'm asked that question, that's my 9        answer. 10      Q. Doctor, do you have an 11      opinions in this case on how the mesh 12      itself will change within the body? 13      MR. SNELL: Objection to 14      form. 15      A. I don't understand your 16      question. 17      Q. Do you have an understanding 18      of what happens to mesh once it's 19      surgically placed within the female body? 20      MR. SNELL: Same objection, 21      form. 22      A. I don't understand that 23      question, either. 24      Q. Do you have an 25      understanding -- I don't know how else to</p>	<p>1        associated with the sectioning, the 2        histological processing of the tissue 3        that indicates there's any change in the 4        mesh fiber. 5        Q. Aside from that one opinion 6        that you do not see any degeneration of 7        the Prolift mesh, do you have any other 8        opinions on what happens to the mesh once 9        it's placed in the female body? I'm 10      talking only about Prolift mesh. 11      A. No. 12      MR. SNELL: Objection to 13      form. 14      BY MR. MAZIE: 15      Q. If there's inflammation, 16      does it go through a process -- let me 17      ask it a different way. It's kind of a 18      lead up. 19      You talked about active 20      inflammation earlier, correct? You saw 21      no evidence of active inflammation or did 22      I misunderstand you? 23      A. No. I think that's a 24      misunderstanding because I have no way of 25      know whether those inflammatory cells</p>

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<p>1 are, in fact, active or quiescent.      2 MR. MAZIE: By the way,      3 Burt, to the extent that since      4 this is a deposition that either      5 will be completed today as to Mrs.      6 Wicker or on another occasion, any      7 of the questions I'm asking him      8 about his background, about the      9 overall response of the mesh,      10 things that are generic to both      11 cases, I'm assuming you will agree      12 that I can use those questions in      13 both cases, so I don't have to ask      14 him the same questions again at      15 the second deposition, if there is      16 a second deposition?</p> <p>17 MR. SNELL: I don't know if      18 I can agree to that because they      19 are different cases with different      20 pathologic aspects from my limited      21 attorney's understanding. So,      22 what his background was and legal      23 work and payments and things like      24 that, general questions about in      25 general how the inflammatory</p>	<p>1 understand -- if you put in the      2 context of Wicker, then there may      3 be differences, there may be      4 things he saw that have bearing      5 upon inflammation, there might be      6 other causes of inflammation.      7 That's why I'm not sure if I can      8 agree to that. I'm not trying to      9 be difficult. I'm not a      10 pathologist, so there may be      11 differences. I don't know.</p> <p>12 MR. MAZIE: I'm going to      13 take the position that anything      14 that I'm asking him today that is      15 generic as to the mesh or,      16 obviously, relating to his      17 background or anything like that      18 or as to science regarding      19 macrophages and inflammation and      20 how fibrosis formed can be used on      21 any case that he's been identified      22 as an expert on in the      23 consolidated cases.</p> <p>24 All right. Why don't we go      25 off the record.</p>
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<p>1 process happens or how collagen      2 lays down, those are general      3 things, but --</p> <p>4 MR. MAZIE: I'm not --</p> <p>5 MR. SNELL: I'm confused by      6 your question.</p> <p>7 MR. MAZIE: The question      8 really relates to his background,      9 it relates to whether he has any      10 opinions on the pore size or      11 whether there's degradation or how      12 it effects the female body      13 generically, Prolift mesh, all      14 those questions would be the same      15 for both cases. They're not      16 specific to one versus the other.      17 So all I'm saying is, I'm going to      18 ask him now, so I don't have to      19 ask him the exact same questions      20 and get the exact same questions      21 either later today or another day.      22 It would be silly.</p> <p>23 MR. SNELL: If they're      24 general questions, they're general      25 questions. I just don't</p>	<p>1 VIDEOGRAPHER: The time is      2 now 2:57. We are going off the      3 record.</p> <p>4 - - -</p> <p>5 (Whereupon, a brief recess      6 was taken.)</p> <p>7 - - -</p> <p>8 VIDEOGRAPHER: The time is      9 now 3:05. We are back on the      10 record.</p> <p>11 BY MR. MAZIE:</p> <p>12 Q. Let's go to your report now,      13 Doctor. In the first paragraph, you      14 state fibrosis --</p> <p>15 A. What page?</p> <p>16 Q. Conclusions. You say that      17 fibrosis, whether it's secondary to      18 traumatic or -- how do pronounce that?</p> <p>19 A. Iatrogenic.</p> <p>20 Q. Iatrogenic injury or      21 response to tissue necrosis or damage      22 elicits a chronic inflammatory response      23 in association with the maturation of the      24 collagen fibers.</p> <p>25 Is what you are saying there</p>

15 (Pages 54 to 57)

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<p>1 fibrosis itself elicits a chronic 2 inflammatory response?</p> <p>3 A. There are inflammatory cells 4 that are associated with the development 5 of granulation tissue that will persist 6 in the tissue once the collagen and the 7 new vessels have formed.</p> <p>8 Q. So, sometimes inflammation 9 causes fibrosis, correct?</p> <p>10 A. Well, it's not causing the 11 fibrosis. There's an injury to the 12 tissue of one sort or another that leads 13 to fibrosis. The inflammatory response 14 is part of that.</p> <p>15 Q. Okay. And if there is 16 inflammation as a result of the fibrosis, 17 will you be able to see that in the 18 slides?</p> <p>19 A. Well, you can see -- 20 certainly see the inflammatory cells and 21 the presence of the collagen. They are a 22 normal component of healing regardless of 23 what, as I said here, regardless of what 24 the injury is.</p> <p>25 Q. You say lower down, foreign</p>	<p>1 place. You see it in selected areas. 2 Q. But that inflammation itself 3 will be chronic?</p> <p>4 MR. SNELL: Objection to 5 form.</p> <p>6 A. Chronic inflammation has two 7 definitions. One is in -- relative to 8 the type of inflammatory cell that's 9 present, just like acute inflammation 10 tends to mean neutrophils and occasional 11 eosinophils. Chronic inflammation is 12 composed of lymphocytes, monocytes, 13 macrophages and occasionally mass cells. 14 That's a particular terminology that's 15 used in a pathologic sense. It's not a 16 temporal sense. It has some temporal 17 component because the more chronic 18 inflammatory response tends to follow the 19 more acute inflammatory response. So 20 there is a time dependency. But when you 21 are talking about chronicity, 22 long-standing process, that's a different 23 kind of chronic.</p> <p>24 Q. Okay. Let's talk about the 25 temporal relationship to the chronic</p>
<p style="text-align: center;">Page 59</p> <p>1 bodies are present, the inflammatory 2 response is chronic and persistent. What 3 does that mean?</p> <p>4 A. That the macrophage and 5 giant cell response -- the macrophage and 6 giant cell response will persist in the 7 tissue in some cases forever. It will -- 8 even in situations where you look at 9 surgical suture granulomas ten years 10 later, it will still be inflammatory 11 cells, macrophages in a few lymphocytes.</p> <p>12 Q. Is it fair to say as a 13 general proposition where mesh -- and I'm 14 talking about Prolift mesh -- is placed 15 within the female body where there's an 16 inflammatory response is going to be 17 chronic in many instances?</p> <p>18 A. Almost exclusively, yes.</p> <p>19 Q. So, any time there's a 20 Prolift mesh, there will be a chronic 21 inflammatory response within the female 22 body?</p> <p>23 A. Of one degree or another.</p> <p>24 It's not universal. In other words, you 25 don't see inflammation all over the</p>	<p style="text-align: center;">Page 61</p> <p>1 inflammatory response from the mesh. 2 Okay?</p> <p>3 Where there is a chronic 4 inflammatory response from the mesh in 5 the female body that mesh will stay 6 inflamed for how long?</p> <p>7 MR. SNELL: Objection to 8 form.</p> <p>9 A. Well, the concept of 10 inflamed, generally, indicates an act of 11 process of inflammation. And that's not 12 what is present, at least as best as we 13 can tell. There is inflammatory cells as 14 a result of the foreign material, but 15 they aren't necessarily doing anything in 16 an inflammatory process. In other words, 17 they're not, to the best of my knowledge, 18 releasing enzymes or other substances in 19 the tissue that have an adverse effect on 20 the tissue, they're just there.</p> <p>21 Q. Where there is that type of 22 chronic inflammatory response, how long 23 will it last?</p> <p>24 A. Potentially, forever.</p> <p>25 Q. So, when there is a chronic</p>

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<p>1 inflammatory response from the mesh      2 itself, it's permanent in nature?      3 MR. SNELL: Objection to      4 form.      5 BY MR. MAZIE:      6 Q. That response.      7 A. If there's inflammation, it      8 can persist, essentially, forever.      9 Q. You would expect that, where      10 there is inflammation, that the      11 inflammation will persist within the body      12 until the person dies?      13 A. Correct.      14 Q. And you say that for      15 some unknown -- I'm sorry. You say for      16 unknown reasons, some patients may have a      17 much more intense response than others      18 even when using similar materials and      19 surgical techniques. What did you mean      20 by that?      21 A. That there's patient      22 variability, unpredictable patient      23 variability regardless of what the      24 materials are, that some patients react      25 more actively, more exuberantly to</p>	<p>1 inflammatory response to the mesh as      2 opposed to others?      3 A. Well, I don't -- as I said,      4 I don't know that's true with mesh. I      5 haven't -- most of the cases of mesh that      6 I have seen in regard to hernias were      7 removed for other reasons, either      8 adhesion to other sites to other organs      9 and in many cases due to infection. So      10 it's difficult to generalize to meshes as      11 a class of materials.      12 Q. All right. Then, we'll back      13 it up one. And it's fair to say that      14 it's your opinion that when foreign      15 bodies, such as mesh, are placed into      16 the body, some people have more of an      17 intense response, inflammatory response      18 to the foreign body as opposed to others?      19 MR. SNELL: Objection to      20 form.      21 A. As I said, I don't know I      22 can generalize to mesh because I don't      23 have the experience, other than that      24 which I have indicated. The statement      25 had to do with foreign material across</p>
<p style="text-align: center;">Page 63</p> <p>1 foreign material than others. And you      2 can see this in a number of different      3 situations. It's -- there's no way to      4 understand it, to predict it, to even      5 truly understand the mechanism, whether      6 it's an allergic phenomenon or some other      7 phenomena, it's not known.      8 Q. So it's fair to say that the      9 mesh will react differently within      10 different women?      11 MR. SNELL: Objection to      12 form.      13 A. Well, I don't know that.      14 I'm just -- this was a general statement      15 of observations with foreign materials in      16 many different situations where, in some      17 cases, they're of a much more pronounced      18 inflammatory response with similar      19 materials versus other patients. I can't      20 speak to the vast population of patients      21 with mesh other than the mesh that I have      22 seen in hernia procedures.      23 Q. You're experience as a      24 pathologist in examining mesh is that      25 some patients have a much more intense</p>	<p style="text-align: center;">Page 65</p> <p>1 the spectrum of foreign materials used in      2 surgical procedures.      3 Q. So you can't give us an      4 opinion one way or the other as to      5 whether or not mesh, in particular      6 Prolift mesh, affects different people      7 differently?      8 A. Correct.      9 Q. And you can't give an      10 opinion with regard to Prolift mesh as to      11 what type of inflammatory response is      12 expected within the average person?      13 MR. SNELL: Objection to      14 form.      15 BY MR. MAZIE:      16 Q. Or the average female.      17 MR. SNELL: Same objection.      18 A. Well, my understanding is      19 that the type of inflammation is what I      20 have described. That it's mononuclear      21 and macrophage inflammation with      22 fibroblast as a general response to the      23 presence of the mesh material.      24 Q. But can you quantify what is      25 the expected inflammation; in other</p>

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<p>1 words, how bad or how severe that 2 inflammation is in the typical female 3 anatomy?</p> <p>4 MR. SNELL: Objection to 5 form.</p> <p>6 THE WITNESS: I would have to 7 look at large numbers of specimens 8 to be able to answer that and I 9 can't answer that.</p> <p>10 BY MR. MAZIE:</p> <p>11 Q. So you don't have such an 12 opinion?</p> <p>13 A. Correct.</p> <p>14 Q. Do you have any opinions as 15 to whether someone who has a pre-existing 16 chronic pain syndrome is affected 17 differently by the mesh?</p> <p>18 A. I do not, no.</p> <p>19 Q. You say that surgery, per 20 se, regardless of whether foreign 21 material is used, including sutures, will 22 lead to tissue damage with necrosis of 23 connective tissue and fat; is that 24 correct?</p> <p>25 A. Correct.</p>	<p>1 process. Obviously, if one makes an 2 incision in the skin, a scar will form. 3 That's easily identifiable because 4 there's an absence -- there are changes 5 in the epidermis and there's an absence 6 of skin appendages in the underlying 7 tissue and we see that grossly, as well 8 as microscopically. In dealing with 9 tissues, such as mesh implanted in vaginal tissue, there is fibrosis, there's no question, but -- and one could, based on the general concept that when you have surgical disruption of the tissue, you will develop fibrosis which is equivalent to scar. I would agree that there is some -- there's scar tissue, but it's not as easily definable as it is in certain tissues because of the nature of the underlying tissue itself.</p> <p>MR. MAZIE: I object and move to strike as nonresponsive.</p> <p>BY MR. MAZIE:</p> <p>Q. Doctor, all I've asked you was, does the mesh cause scar tissue.</p>
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<p>1 Q. Then you say, there's always 2 some degree of associated damage to blood 3 vessels and tissue nerve bundles leading 4 to entrapment. These responses are not 5 unique to mesh. What do you mean by 6 that?</p> <p>7 A. I think precisely what I 8 said, that the surgical procedure, 9 itself, if the tissue has nerve bundles 10 and, obviously, has -- unless we're 11 dealing with tendon or similar tissue, 12 has blood vessels and often adipose 13 tissue, there's going to be damage to 14 those tissues that will be affected by 15 the healing process.</p> <p>16 Q. We touched on this earlier. 17 Doctor, do you agree that the mesh itself 18 can cause scar tissue?</p> <p>19 MR. SNELL: Objection to 20 form.</p> <p>21 A. The mesh cause fibrosis. It depends on how one defines scar tissue.</p> <p>22 Q. How do you define scar tissue?</p> <p>23 A. It's not an easily defined</p>	<p>1 A. I think I've answered it. 2 Q. Well, I don't understand 3 your answer, Doctor. 4 A. Well, that's different. 5 MR. SNELL: That's not a basis for an objection.</p> <p>BY MR. MAZIE:</p> <p>Q. I don't think your answer was responsive.</p> <p>MR. SNELL: I think it was.</p> <p>Q. Let me ask you simply, does the mesh cause fibrosis?</p> <p>MR. SNELL: Objection to form.</p> <p>A. Yes.</p> <p>Q. Is fibrosis different than scar tissue?</p> <p>A. Under certain circumstances, yes.</p> <p>Q. Okay. Within Linda Gross, is the fibrosis different than scar tissue?</p> <p>MR. SNELL: Object to form.</p> <p>A. It is not easily discernable whether she has a well-defined scar or</p>

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<p>1 scars versus just deposition of collagen 2 in the tissue surrounding the mesh. 3 Q. And if the mesh itself is 4 the cause of the -- strike that. 5 Mesh doesn't cause scar 6 tissue unless there's an incision related 7 to that, is that correct? 8 A. No. One has to implant, 9 imbed the mesh or implant the mesh in the 10 site, one will develop, obviously, 11 disruption of the surrounding tissues. 12 Q. You say on the -- on page 5 13 that Mrs. Gross, also, had evidence of 14 chronic endometriosis in the uterus in 15 the specimen, possibly indicating that 16 she had or was susceptible to chronic 17 inflammation in her pelvic organ. Do you 18 see that? 19 A. Yes. 20 Q. Doctor, can you give an 21 opinion within a reasonable degree of 22 medical probability that Linda Gross was 23 susceptible to chronic inflammation in 24 her pelvic organs? 25 A. All I can say within a</p>	<p>1 Q. So I want to make sure I 2 understand this. You are not giving an 3 opinion that Linda Gross was susceptible 4 to chronic inflammation in her pelvic 5 organs? 6 MR. SNELL: Objection to 7 form. 8 A. Other than the inflammation 9 she had in her uterus. 10 Q. Doctor, you saw in the 11 slides that there were entrapment of 12 multiple nerves? 13 A. Correct. 14 Q. You can't tell us within a 15 reasonable degree of medical probability 16 as to how those nerves became entrapped? 17 MR. SNELL: Objection to 18 form. 19 BY MR. MAZIE: 20 Q. Correct? 21 A. They are a response to the 22 surgical reparative process. 23 Q. How do you know that? 24 A. Because they're occurring in 25 the site of surgery.</p>
<p style="text-align: center;">Page 71</p> <p>1 degree of medical probability is that she 2 had inflammation in her pelvic organs. 3 The -- at least involving the uterus. 4 More than that, I can't say. 5 Q. And what you are saying is 6 she had endometriosis? 7 A. No. Endometritis and 8 endometriosis is two different things. 9 Q. You're saying she had 10 evidence of endometritis in her uterus? 11 A. In the lining of the -- 12 endometrial lining of the uterus, she had 13 inflammation. 14 Q. You can't give an opinion 15 within a reasonable degree of medical 16 probability as whether or not she was 17 susceptible to chronic inflammation in 18 her pelvic organs outside of the uterine 19 lining? 20 MR. SNELL: Objection to 21 form. 22 A. Of the other pelvic organs 23 that I examined, which included the 24 cervix and the fallopian tubes, she did 25 not have inflammation of those sites.</p>	<p style="text-align: center;">Page 73</p> <p>1 Q. You mean an actual area 2 where there was incision? 3 A. Yes. There was implanting 4 of -- there was an incision, there was 5 placement of mesh, there was removal of 6 mesh. There are multiple procedures 7 taking place in those tissues that will 8 lead to fibrosis and surrounding of nerve 9 tissue, nerve fibers. 10 Q. We, also, know that the mesh 11 can cause fibrosis as well; correct? 12 A. Yes, but it's a natural 13 response to any surgical procedure, 14 whether regardless of whether you use 15 mesh or not, that you will see nerve 16 fibers enveloped or surrounded by fibrous 17 tissue. 18 Q. You can't tell us within a 19 reasonable degree of medical probability 20 as to whether those nerves that were 21 entrapped were the result of the actual 22 surgical process or whether they were the 23 result of fibrosis due to the mesh 24 itself? 25 MR. SNELL: Objection to</p>

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<p>1           form.</p> <p>2         A. There's absolutely no way</p> <p>3         anyone scientifically can separate those</p> <p>4         two processes.</p> <p>5         Q. Now, you talked about the</p> <p>6         fact that you saw a neuroma. What is a</p> <p>7         neuroma?</p> <p>8         A. A neuroma, in this case, is</p> <p>9         what's called a traumatic neuroma. It is</p> <p>10       secondary to disruption or transection</p> <p>11       of nerve, and it subsequently leads to</p> <p>12       the proliferation of little nerve fibers</p> <p>13       that extend out from the end of the</p> <p>14       disrupted segment.</p> <p>15       Q. Could that neuroma have been</p> <p>16       caused by a reaction to the mesh?</p> <p>17       A. No. It's a reaction to</p> <p>18       transection. It's a surgical process.</p> <p>19       Q. How do we know that?</p> <p>20       A. Because that's how traumatic</p> <p>21       neuromas develop. They're either</p> <p>22       disrupted by trauma, external trauma or</p> <p>23       they're disrupted by iatrogenic trauma.</p> <p>24       They are not responding to the presence</p> <p>25       of surrounding mesh.</p>	<p>1         changes depending on how much mesh is in</p> <p>2         the female body?</p> <p>3           MR. SNELL: Objection to</p> <p>4           form.</p> <p>5         A. Have I studied that myself,</p> <p>6         no.</p> <p>7         Q. Are you aware of any</p> <p>8         literature that speaks to that issue?</p> <p>9         A. No.</p> <p>10       Q. Can you tell us within a</p> <p>11       reasonable degree of medical probability</p> <p>12       as to how this amount of mesh that's</p> <p>13       contained within the Prolift system will</p> <p>14       affect the female body as opposed to a</p> <p>15       smaller amount of mesh used in several</p> <p>16       sutures?</p> <p>17           MR. SNELL: Objection to</p> <p>18           form.</p> <p>19         A. It's a quantitative process.</p> <p>20         Where you have mesh, there are areas in</p> <p>21         which there is adjacent fibrosis and</p> <p>22         adjacent inflammatory response, in some</p> <p>23         areas. In other areas, there's almost</p> <p>24         none. Where you have a suture or</p> <p>25         sutures, the response is localized to the</p>
<p style="text-align: center;">Page 75</p> <p>1         Q. How many neuromas did you</p> <p>2         see?</p> <p>3         A. One.</p> <p>4         Q. And is the reason that you</p> <p>5         arrive at the opinion that the neuroma</p> <p>6         was traumatic in nature due to the</p> <p>7         transection because there was no mesh</p> <p>8         next to it or adjacent to it?</p> <p>9         A. No. That's the</p> <p>10       pathophysiologic mechanism by which</p> <p>11       traumatic neuromas develop.</p> <p>12       Q. Do you have an opinion as to</p> <p>13       whether or not the mesh itself migrates</p> <p>14       within the female body?</p> <p>15       A. I do not, no. I have no</p> <p>16       opinion.</p> <p>17       Q. You say in your opinion that</p> <p>18       Mrs. Gross did not -- I'm sorry, strike</p> <p>19       that.</p> <p>20       You say that in your opinion</p> <p>21       Ms. Gross had an unremarkable response to</p> <p>22       the Ethicon mesh, is that correct?</p> <p>23       A. Correct.</p> <p>24       Q. Have you studied whether and</p> <p>25       to what extent the inflammatory response</p>	<p style="text-align: center;">Page 77</p> <p>1         presence of the suture. It does not</p> <p>2         spread out through the tissue.</p> <p>3         Q. Where there's mesh, such as</p> <p>4         the Prolift mesh, do you know if that</p> <p>5         inflammatory response builds on itself?</p> <p>6         A. I don't understand that</p> <p>7         question.</p> <p>8         Q. Where there's more mesh,</p> <p>9         such as the amount of mesh we have in the</p> <p>10       Prolift system, do you know if that</p> <p>11       insights a much greater multiple of</p> <p>12       inflammatory response and/or fibrosis as</p> <p>13       opposed to a smaller amount of mesh you</p> <p>14       would see in a couple of sutures?</p> <p>15           MR. SNELL: Objection to</p> <p>16           form. Go ahead.</p> <p>17         A. The response is associated</p> <p>18         with the mesh fibers themselves. It's</p> <p>19         not going -- obviously, if you have</p> <p>20         multiple fibers, just as if you had</p> <p>21         multiple sutures in a tissue you would</p> <p>22         have quantitatively more inflammation in</p> <p>23         total, but it's a question of whether the</p> <p>24         mesh fiber has elicited an inflammatory</p> <p>25         response and how much of it is elicited.</p>

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<p>1      In many areas, the mesh is not elicited,      2      a significant or, if any, inflammatory      3      response in other areas, there's more of      4      an inflammatory response. Obviously, if      5      you have more mesh, you potentially can      6      have more inflammation.</p> <p>7      Q. Are you aware of any      8      literature, Doctor, that talks about the      9      multiplication effect where there's more      10     mesh?</p> <p>11     A. I'm not you aware of it and      12     biologically it makes no sense.</p> <p>13     Q. Have you reviewed any of      14     Linda Gross' medical records?</p> <p>15     A. I reviewed some portions of      16     them. Obviously, I reviewed the      17     operative reports and the surgical      18     pathology reports.</p> <p>19     Q. Do you have any opinion as      20     to whether and to what extent Linda Gross      21     suffers from chronic pain as a result of      22     the mesh?</p> <p>23     A. I'm aware she's had      24     complaints of chronic pain. Whether it's      25     due to the mesh or not, I don't know.</p>	<p>1      was held off the video record:)      2      MR. MAZIE: We are here with      3      the understanding of taking the      4      deposition of Dr. Factor with      5      regard to both the Gross and the      6      Wicker case. I arrived here today      7      without prior warning. And Mr.      8      Snell told me that he was going to      9      refuse to allow the Doctor to      10     answer questions concerning the      11     Wicker case. Is that correct?      12     MR. SNELL: You're patently      13     wrong. You were told by Kelly      14     Crawford that we were not      15     producing Dr. Factor, we object to      16     producing him -- producing Dr.      17     Factor in the Wicker case that in      18     light of the fact that, A., Dr.      19     Faulk (ph) is a new expert and he      20     has not been deposed. There's a      21     motion pending on him. B, Dr.      22     Welsh has not even been deposed      23     yet on Wicker. Therefore, we did      24     not believe it would be pertinent      25     or right to produce Dr. Factor in</p>
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<p>1      Q. I'm to go through some of      2      the slides. I'm going to show you      3      Doctor, what has been marked as Factor 1,      4      which is sample CR07-8397. These are      5      slides you have seen before; correct?</p> <p>6      A. Just the ones I got this      7      morning, or this afternoon.</p> <p>8      Q. But the --</p> <p>9      A. I saw the slides. I saw      10     these pictures today.</p> <p>11     Q. Right. But you have seen      12     these slides before?</p> <p>13     A. Oh, absolutely.</p> <p>14     Q. Let's turn to -- I want to      15     start with -- I guess we'll start with      16     the 13th slide.</p> <p>17     A. What is the picture?</p> <p>18     MR. MAZIE: Okay. Why don't      19     we change tape.</p> <p>20     VIDEOGRAPHER: The time is      21     now 3:30. This is the end of Disc      22     Number 1. We are now going off      23     the record.</p> <p>24     - - -</p> <p>25     (Whereupon, the following</p>	<p>1      the Wicker case concerning that      2      plaintiff's experts have not even      3      been disclosed, let alone one of      4      may not be allowed to so testify      5      in the Wicker case.</p> <p>6      So your representation is      7      wrong. Whether you were copied on      8      the e-mail to your partner, Adam      9      Slater, I frankly did not go back      10     and check that.</p> <p>11     MR. MAZIE: I was aware you      12     were taking that position, but the      13     judge had said that you should      14     take whatever you can with regard      15     to Dr. Welsh. You were given the      16     opportunity. He was not finished      17     for whatever reason. He was      18     prepared to stay. Kelly decided      19     not to stay. And in either event,      20     the Judge said that we should go      21     ahead and take Dr. Factor on both      22     cases regardless.</p> <p>23     MR. SNELL: It's my      24     understanding that was not what      25     happened, that the court reporter</p>

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<p>1       needed to leave. The Judge said      2       we should focus on Gross first,      3       that's why Kelly focused on Gross      4       first and the Judge has not said      5       that Dr. Factor should be deposed      6       on Wicker in addition to Gross as      7       we sit here today at this      8       deposition. So I think that's      9       attorney/lawyer argument, and if      10      there's a disagreement, it's      11      amongst the counsel.</p> <p>12      MR. MAZIE: So we're clear,      13      to the extent you do not allow me      14      to ask questions concerning Wicker      15      and we're not getting in touch      16      with the Judge, we'll seek to move      17      to bar Dr. Factor's testimony in      18      the Wicker case. And to the      19      extent the Judge does not grant      20      that, we're going to ask that the      21      deposition take place at our      22      office at our convenience. Okay.</p> <p>23      MR. SNELL: We are fine with      24      producing Dr. Factor for the      25      Wicker case. And Dr. Factor,</p>	<p>1       deposed on Wicker. But at this      2       point, he should be after Dr.      3       Welsh and after the motion is      4       decided on plaintiff's newly      5       disclosed, last minute expert on      6       the amyloidosis pertinent to the      7       Wicker case, who has refused Dr.      8       Factor's report and opines about      9       it.</p> <p>10      MR. MAZIE: I want to place      11      on the record that the first time      12      amyloidosis was ever raised was by      13      Dr. Factor and we turned around      14      and produced an expert within a      15      week or less and that was, by the      16      way, close to a month ago.</p> <p>17      MR. SNELL: The fact that      18      Dr. Welsh did not recognize it, I      19      cannot speak to that.</p> <p>20      MR. MAZIE: Okay. It's      21      there.</p> <p style="text-align: center;">- - -</p> <p style="text-align: right;">(Whereupon, a discussion was held off the record.)</p> <p style="text-align: center;">- - -</p>
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<p>1       you're fine with giving a      2       deposition in the Wicker case.</p> <p>3       THE WITNESS: I have no      4       problem giving a deposition, but      5       it limits the number of days that      6       you have available because I often      7       have to be here at the hospital      8       for portions of those days.</p> <p>9       MR. SNELL: So we will      10      produce Dr. Factor here, and it      11      will be done -- I would like to      12      put something else on the record.      13      We offered to move the deposition      14      in toto until after Dr. Welsh was      15      deposed. And I believe Dr. Factor      16      gave a date of December 19th in      17      response to Mr. Mazie's dates that      18      he provided for potential      19      availability in December.</p> <p>20      So, that was an offer that      21      we made that was rejected and      22      we've never stated our position      23      was otherwise. So, Dr. Factor --      24      I'm more than willing to produce      25      him. He's more than willing to be</p>	<p>1       VIDEOGRAPHER: The time is      2       now 3:42. We are back on the      3       record.</p> <p>4       BY MR. MAZIE:</p> <p>5       Q. Doctor, I'm showing you what      6       has been, I think, considered to be slide      7       number 14, which is part of Factor 1.      8       Why don't you hold that up for the      9       camera, so we're all on the same page?</p> <p>10      MR. SNELL: I think you've      11      identified it as the 13th slide.</p> <p>12      MR. MAZIE: It's 13th, but      13      if you include the first page,      14      it's the 14th.</p> <p>15      BY MR. MAZIE:</p> <p>16      Q. Doctor, can you tell us what      17      is going on in that slide?</p> <p>18      MR. SNELL: Objection to      19      form.</p> <p>20      MR. MAZIE: What is the      21      objection?</p> <p>22      MR. SNELL: What is going      23      on?</p> <p>24      MR. MAZIE: Yes.</p> <p>25      BY MR. MAZIE:</p>

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<p>1       Q. What do you see?</p> <p>2       A. There are number of fiber</p> <p>3       mesh spaces with some residual mesh</p> <p>4       material. A lot of it has been disrupted</p> <p>5       by technical artifact -- the sectioning</p> <p>6       of the tissue. There is a longitudinal</p> <p>7       vessel running obliquely across the</p> <p>8       humoids (ph). There's several small</p> <p>9       vessels off to one side, and there are</p> <p>10      inflammatory cells, including what</p> <p>11      appears to be lymphocytes and macrophages</p> <p>12      along with a few multi-nucleated giant</p> <p>13      cells.</p> <p>14      Q. Doctor, fair to say there's</p> <p>15      active chronic inflammation on this</p> <p>16      slide?</p> <p>17      MR. SNELL: Objection to</p> <p>18      form.</p> <p>19      THE WITNESS: There's</p> <p>20      inflammation. Again, there's no</p> <p>21      way to determine that this is</p> <p>22      active.</p> <p>23      BY MR. MAZIE:</p> <p>24      Q. And there's, at least, one</p> <p>25      or two giant cells?</p>	<p>1       mesh fibers were is fibrosis?</p> <p>2       A. It is around the fibers and</p> <p>3       between the fibers, yes.</p> <p>4       Q. You can't give us an opinion</p> <p>5       as to what the cause of that fibrosis is</p> <p>6       in this tissue sample from Linda Gross,</p> <p>7       correct?</p> <p>8       MR. SNELL: Objection to</p> <p>9       form.</p> <p>10      A. It's part of the process of</p> <p>11      the implantation of the mesh and the</p> <p>12      surgical ailment.</p> <p>13      Q. Can you tell whether or not</p> <p>14      the surgical fibers themselves caused the</p> <p>15      fibrosis that you see in this slide,</p> <p>16      number 15?</p> <p>17      MR. SNELL: Objection.</p> <p>18      A. There's no way to</p> <p>19      specifically ascribe the fibrosis to the</p> <p>20      mesh. In fact, in the central portion of</p> <p>21      the field, there are virtually no fibers</p> <p>22      and there's still fibrosis and fibrosis</p> <p>23      extends beyond the mesh fibers. So</p> <p>24      trying to directly relate the fibrosis to</p> <p>25      the mesh is not possible.</p>
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<p>1       A. There are several giant</p> <p>2       cells, both off -- slightly away from the</p> <p>3       fibers as well as appearing to be near</p> <p>4       the fibers.</p> <p>5       Q. There's chronic inflammation</p> <p>6       adjacent to the mesh fibers where the</p> <p>7       chronic fibers were?</p> <p>8       A. Chronic inflammation is</p> <p>9       between the mesh fibers. It's, actually,</p> <p>10      closest to the blood vessel that runs</p> <p>11      obliquely through the field.</p> <p>12      Q. Just so we're clear, there</p> <p>13      is chronic inflammation between the mesh</p> <p>14      fibers; correct?</p> <p>15      A. That's just what I said.</p> <p>16      Q. And there are, also, giant</p> <p>17      cells there?</p> <p>18      A. There's, at least, one giant</p> <p>19      cell in that particular area.</p> <p>20      Q. Let's turn to the 15th</p> <p>21      slide. Fair to say that all of the pink</p> <p>22      stuff you see on this slide is fibrosis?</p> <p>23      A. Yes.</p> <p>24      Q. And within or surrounding</p> <p>25      the mesh fibers that you see or where the</p>	<p>1       Q. You can't tell us one way or</p> <p>2       the other, correct?</p> <p>3       A. Correct.</p> <p>4       Q. Next, Number 16, do you see</p> <p>5       chronic inflammation around the mesh in</p> <p>6       the slide?</p> <p>7       A. Well, this is the same field</p> <p>8       as the higher power that we saw in the</p> <p>9       previous, the number 13 or 14, whatever</p> <p>10      that number was.</p> <p>11      Q. Can you see extensive</p> <p>12      fibrosis in this slide?</p> <p>13      A. There is fibrosis that</p> <p>14      extends around the mesh fibers and</p> <p>15      extends away from the mesh fibers. The</p> <p>16      area off to the upper right has no mesh</p> <p>17      fibers and has the same fibrosis</p> <p>18      elsewhere.</p> <p>19      Q. Let's go to the 26th slide,</p> <p>20      which looks like this.</p> <p>21      A. That's the same field as we</p> <p>22      have already discussed.</p> <p>23      Q. Okay. That's it.</p> <p>24      MR. SNELL: Why don't we</p> <p>25      call it, is it CR078 --</p>

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<p>1           THE WITNESS: They're all 2           the same, unfortunately. 3   BY MR. MAZIE: 4       Q. This shows chronic 5       inflammation, this slide? 6       A. This is the same field that 7       we saw. 8       Q. Let's go two more, number 9       28. We haven't talked about this one 10      yet, have we? 11       A. Not to my knowledge, no. 12       Q. This shows fibrosis 13       surrounding the mesh fibers? 14       A. Yes, with virtually no 15       inflammation. 16       Q. There's fibrosis surrounding 17       the mesh fibers, correct? 18       A. I just said so, yes. 19       Q. And the fibers themselves 20       here, the fibrosis is, actually, pulling 21       the fibers together; correct? 22       A. Well you -- 23       MR. SNELL: Object to form. 24       THE WITNESS: -- you can't 25       make that conclusion. There's</p>	<p>1           next one, the fourth one we're looking 2           at. It's this one. 3           A. No. It's not that one. 4           It's this one. 5           Q. Okay. And it's Number 33. 6           MR. SNELL: Let me get that. 7           What is in front of it? 8           THE WITNESS: It's the 9           same. 10          MR. MAZIE: Fourth one of 11          this series. 12          MR. SNELL: You are saying 13          this is page what? 14          MR. MAZIE: 33. 15   BY MR. MAZIE: 16       Q. Doctor, what do you see 17       there? 18       A. I see a portion of fiber. I 19       see a few inflammatory cells. I see some 20       spaces off to the upper left. 21       MR. MAZIE: I need to pick 22       this up. I'm sorry. 23       VIDEOGRAPHER: The time is 24       now 3:50. We're going off the 25       record.</p>
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<p>1           fibrosis and there are fibers, but 2           there's no way you can make a 3           conclusion, especially because 4           there's, also, artifacts in this 5           tissue that the whole -- that is 6           at 12 o'clock, there's a tear in 7           the tissue which disrupts the 8           fibrous tissue. 9   BY MR. MAZIE: 10       Q. Doctor, do you know one way 11       or the other whether the fibrosis is 12       affecting the distance between the mesh 13       fibers? 14       A. I don't know. 15       Q. Okay. Let's go to Number 16       33, which looks like that. You might 17       want to count it from the last one, which 18       is 26? 19       A. Is it this one? 20       Q. There's a number of them in 21       a row that look alike. So, let's see. 22       The first one you see of this, looks like 23       that. 24       A. Yes. 25       Q. So not that one, not the</p>	<p>1           - - - 2           (Whereupon, a brief recess 3           was taken.) 4           - - - 5           VIDEOGRAPHER: The time is 6           now 3:51. We are back on the 7           record. 8   BY MR. MAZIE: 9       Q. Doctor, you see the 10       degradation of that mesh fiber there? 11       A. I see changes associated 12       with the edge of the mesh. I can't tell 13       whether that's pre-existent degradation 14       or changes associated with the sectioning 15       because there artifacts associated with 16       the sectioning. The mesh fiber, 17       actually, can be seen in its entirety on 18       the two photographs next, which shows 19       polarization of that mesh fiber and shows 20       it intact. 21       Q. Let's go to Number 35. Do 22       you see the polarized portion -- it's all 23       polarized, but you see the colored 24       portion in the middle of the mesh fiber? 25       A. Yes.</p>

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1	Q. Fair to say there's 2 degradation of that mesh fiber?	1 Mazie, was -- before starting the 2 deposition, he was informed by the 3 defense he was not to ask any 4 questions of Dr. Factor about the 5 Wicker case. And we are prepared 6 to proceed and take the deposition 7 fully on both cases, and we think 8 we should be permitted to fully 9 take the deposition today.
10	A. I don't know that's, in 11 fact, the case. There's tearing of the 12 tissue. There's a -- what looks like 13 connective tissue or inflammatory tissue 14 that's crossing that space. And I cannot 15 tell whether that is degradation of the 16 surface or a portion of the surface or is 17 a disruption secondary to sections 18 artifact.	10 THE COURT: Is the 11 deposition as to Gross completed?
19	Q. Just so we're clear -- 20 VIDEOGRAPHER: The time is 21 now 3:52o. We're going off the 22 record. 23 - - - 24 (Whereupon, a brief recess 25 was held.) 26 - - - 27 (Whereupon, the following 28 discussion was held off the video 29 record:) 30 - - - 31 THE COURT: Hello, Counsel. 32 MR. SLATER: Hello, Judge.	12 MR. MAZIE: Judge -- 13 MS. CRAWFORD: Kelly 14 Crawford. I don't know if you're 15 directing that at me. 16 THE COURT: Go ahead, Kelly. 17 MS. CRAWFORD: I'm not at 18 the deposition, Judge, but as I 19 understand it, Mr. Snell can 20 confirm, they're in the middle of 21 the Gross deposition regarding Dr. 22 Factor at this point and it's not 23 yet completed. 24 MR. MAZIE: Judge, Dave 25 Mazie. I will be done with the
1	THE COURT: Hi, how are you, 2 Adam? 3 MR. SLATER: Fine, thanks. 4 How are you? 5 The COURT: Good. So we 6 have Adam Slater on the record and 7 Ms. Crawford. 8 MS. CRAWFORD: Kelly 9 Crawford. 10 THE COURT: Okay, good. So 11 we have a certified court reporter 12 taking down the record?	1 Gross deposition within the next 2 20 to 30 minutes and ready to 3 proceed and finish up with the 4 Wicker deposition, which quite 5 honestly, will not take more than 6 an hour. 7 MS. CRAWFORD: If you're 8 prepared for defense's position, 9 Judge, just let us know. 10 THE COURT: Go ahead, Kelly. 11 MS. CRAWFORD: We took Dr. 12 Welsh's deposition. Your Honor 13 will recall at the last case 14 management conference this issue 15 came up in connection with the 16 defendant's pending motion to stay 17 the Wicker specific case 18 discovery. And we talked 19 specifically at the case 20 management conference about the 21 fact that the pathologist -- 22 defendant's -- plaintiff's expert 23 pathologist is going to be deposed 24 on the 16th before the Court was 25 going to have an opportunity to

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<p>1 address that motion. And the      2 Court indicated that we should      3 start with Gross and, you know,      4 try the finish Gross and if there      5 was time available to move on to      6 Wicker. We did not start Wicker.      7 We completed Gross. But it had      8 been our position that we are not      9 prepared now prepared to produce      10 Dr. Factor and have him deposed on      11 the Wicker until we complete the      12 Welsh corresponding deposition in      13 Wicker, and that hasn't happened.</p> <p>14 THE COURT: Welsh would have      15 to go before Wicker?</p> <p>16 MS. CRAWFORD: Correct.</p> <p>17 THE COURT: Is he before?</p> <p>18 MS. CRAWFORD: That is our      19 position, Judge. We will recall      20 we had made the motion to stay      21 Wicker's specific case discovery.      22 We talked -- or I didn't talk at      23 that conference, Mary Ellen was my      24 mouthpiece because I couldn't      25 talk -- about the fact that we had</p>	<p>1 case will be ready. But we're in      2 New York and ready to take the      3 deposition of Dr. Factor, and it      4 will be done.</p> <p>5 MS. CRAWFORD: Judge, I      6 don't want to get into an issue      7 about that. I started the      8 deposition on time. We took no      9 break, except for ten minutes so      10 the court reporter can quickly      11 shovel in something to eat. We      12 were there until 7 o'clock. I      13 rushed to try and finish the Gross      14 aspect of the deposition. We do      15 have a pending motion on this      16 issue. We are all spinning our      17 wheels trying to complete the      18 Gross specific discovery in order      19 to be ready for trial. And Dr.      20 Factor is willing to come back at      21 a later time after we had the      22 opportunity to take the Wicker      23 deposition from Dr. Welsh,      24 assuming that your Honor denies      25 the motion that's pending, which</p>
<p style="text-align: center;">Page 99</p> <p>1 that deposition scheduled for      2 Friday and your Honor was going to      3 try to set up a call for --</p> <p>4 THE COURT: Right.</p> <p>5 MS. CRAWFORD: -- the week,      6 but everything got sort of busy.</p> <p>7 MR. SLATER: Your Honor,      8 it's Adam Slater. It doesn't      9 really make sense to us. Defense      10 counsel they took the deposition      11 they wanted to take. It was a      12 very long deposition and they      13 didn't finish, or they finished      14 Gross and didn't have time to do      15 the Wicker questioning. I don't      16 know how that impacts us on the      17 deposition of Dr. Factor. We just      18 want to get it done while we're      19 here. It's counsel's choice not      20 to finish. You know, it turns out      21 it seems like it was a strategy or      22 something. We don't really      23 understand why, or maybe we do      24 understand why they don't want us      25 to take Wicker discovery, so the</p>	<p style="text-align: center;">Page 101</p> <p>1 is still open.</p> <p>2 THE COURT: Okay.</p> <p>3 I have had an opportunity to      4 review the motion. I read the      5 papers on both sides. It was, I      6 think, important that both cases      7 be prepared and that they be      8 jointly prepared, but there comes      9 a practical point where it simply      10 becomes too much of a burden on      11 both sides to get ready for a case      12 that's not going to be the one      13 that's going at this point.</p> <p>14 I understand Mr. Slater's      15 concern that Wicker would be the      16 back up case. And Ms. Crawford,      17 at the last conference, had      18 indicated to me that there was      19 slim and no chance of a settlement      20 offer being made to resolve the      21 Gross case prior to trial. And      22 that, unless the defendants -- the      23 plaintiffs intended to dismiss it,      24 it would be going, barring some      25 unusual event such as a death or</p>

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<p>1       an injury or something.      2       Wicker just got treatment.      3       She needs to have the examination      4       and I think it's scheduled, right?      5       MR. SLATER: That happened      6       yesterday, Judge.      7       THE COURT: So his report      8       should still issue in a timely      9       fashion. That doesn't take up      10      counsel's time, except maybe to      11      discuss it with him, but it      12      doesn't take up significant time.      13      So, his -- the defense report      14      should issue, the Wicker defense      15      report, but I'm not going to      16      require that the rest of the      17      Wicker discovery take place      18      between now and the trial.      19      If anything happens to the      20      Gross trial, we'll immediately do      21      the Wicker discovery within a week      22      or two and move on to the Wicker      23      trial, but I'm assuming that's not      24      going to be necessary. There does      25      come a point where it's now the</p>	<p>1       Judge.      2       VIDEOGRAPHER: The time is      3       now 4:03. We are back on the      4       record.      5       BY MR. MAZIE:      6       Q. Doctor, just so I'm clear,      7       you have no opinion one way or the other      8       as to whether this represents degradation      9       of the mesh?      10      MR. SNELL: Objection to      11      form.      12      BY MR. MAZIE:      13      Q. As a natural process of the      14      mesh.      15      MR. SNELL: Objection to      16      form.      17      A. It cannot be determined      18      whether the changes that are present just      19      at the edge or the end of that fiber      20      represent any degree of degradation or      21      changes associated with the technical      22      processing of the tissue. The remaining      23      portion of that fiber as seen in the      24      polarized photograph appears to be smooth      25      and unremarkable.</p>
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<p>1       end of the week, it's going to be      2       December. Trial is in January.      3       We have, you know, a holiday week      4       in there, at least, simply a      5       couple different holidays, and I'm      6       not going to require -- so I'm      7       going to grant the defense motion      8       to stop the Wicker discovery      9       pending the outcome of the Gross      10      case.      11      The only thing that I am      12      going to require is that the      13      defense independent medical exam,      14      which has been done, that that      15      report issue in a timely fashion      16      as scheduled previously. And      17      then, basically, you will have      18      some clean-up depositions to do.      19      But we can move very quickly to      20      Wicker if we needed to. All      21      right?      22      MR. MAZIE: Thank you, your      23      Honor.      24      MR. SNELL: Thanks, Judge.      25      MR. SLATER: Thank you,</p>	<p>1       Q. But you don't have an      2       opinion as to what the cause of what is      3       occurring at the end of that, whether      4       it's degradation, naturally occurring or      5       something else?      6       MR. SNELL: Objection to      7       form.      8       A. Correct.      9       Q. Let's go to slide number 51,      10      which to make it easier for you is the      11      5th from the end. Yes.      12      Fair to say that you see      13      mesh fibers here encased in or surrounded      14      by fibrosis?      15      A. I see mesh fibers with      16      fibrosis and I see fibrosis without mesh,      17      with spaces that I -- that are more      18      likely than not fat or disruption of the      19      tissue in the center and off on the far      20      right, but certainly the ones in the      21      center are not mesh, but there is fibrous      22      around it.      23      Q. You see multiple mesh fibers      24      or holes where fiber was, correct?      25      A. And there are multiple mesh</p>

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<p>1       fibers. There are a few tears in the 2       tissue above the mesh on both sides and 3       there is fibrosis around those fibers. 4       Q. As you sit here today, you 5       cannot tell us specifically what caused 6       the fibrosis surrounding these mesh 7       fibers?</p> <p>8           MR. SNELL: Objection to 9           form.</p> <p>10          A. I've answered the question 11       before that the fibrosis is part of the 12       surgical repair process.</p> <p>13          Q. But you can't tell us 14       whether it's the actual surgery as an 15       insult to the tissue versus a cause 16       instead by the mesh fibers themselves 17       reacting with the tissue?</p> <p>18          MR. SNELL: Object to form.</p> <p>19          A. The fact that the fibrosis 20       is present in this field as well as in 21       many other fields without any mesh fibers 22       immediately associated with it would 23       argue that this is a process of surgical 24       repair.</p> <p>25          Q. What about in the areas that</p>	<p>1       process. 2       Q. Do you see any inflammation 3       on that slide? 4       A. I described the 5       inflammation. There's macrophages and 6       there may be a few lymphocytes scattered 7       around, but the predominant cells are 8       macrophages. 9       Q. Put this grouping aside. 10       And let's go to Welsh 14, and ask you to 11       go -- these are numbered, so that will 12       make it easier. 13       MR. SNELL: Do you by chance 14       have a copy? 15       MR. MAZIE: No. 16       MR. SNELL: I'm just going 17       to look over. 18       BY MR. MAZIE: 19       Q. Doctor, go to 62. What do 20       you see there? 21       MR. SNELL: Objection to 22       form. 23       A. I see a central area which 24       appears to be -- it's not forming a true 25       granuloma, but it appears to be a</p>
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<p>1       immediately adjacent to the mesh fibers? 2       A. It's the same fibrosis. So 3       one can't -- as I pointed out earlier, 4       one can't easily discriminate between 5       fibrosis associated with repair versus 6       fibrosis associated with mesh. 7       Q. Can or can't? 8       A. Cannot. 9       Q. Let's go to the second to 10       last slide, which is number 53. I'm 11       sorry, third to the last slide. The one 12       with the hemosiderin in the middle. 13       A. Yes. 14       Q. What do you see here, 15       Doctor? 16       A. I see fibrosis, some, I 17       believe, small blood vessels cut 18       longitudinally and I see multiple 19       hemosiderin deposits and macrophage. 20       Q. Does this slide demonstrate 21       chronic injury? 22       A. It demonstrates injury with 23       chronicity because the collagen is mature 24       and the macrophages are in response to 25       the hemosiderin, so this is a chronic</p>	<p>1       granulomatis-type process with even at 2       the low power, I think spindle cells, 3       fiberglass and what happens to be 4       hemosiderin and inflammatory cells. 5       There's a space running vertically or 6       relatively vertically which appears to be 7       a blood vessel, but I'm not entirely 8       sure. Portions of it appear to be blood 9       vessel. 10       Q. Do you see in -- is there, 11       also, fibrosis? 12       A. There's fibrous tissue 13       around the central area of inflammation 14       and hemosiderin. 15       Q. Let's jump to number 70. 16       It's fair to say this slide shows chronic 17       inflammation? 18       MR. SNELL: Objection to 19       form. 20       A. It's a terrible picture and 21       it's difficult to make out, but there are 22       what appears to be giant cells, some of 23       them are multinucleated and lymphocytes 24       with, at least, some of the giant cells 25       appearing, even though it's difficult to</p>

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<p>1 make out on this exposure. It appears 2 that they have hemosiderin within them or 3 near them. 4 Q. Do you see any mesh? 5 A. No. 6 Q. The amount of inflammation 7 you see here, is that something you would 8 expect from a normal surgical process 9 without a foreign body?</p> <p>10 MR. SNELL: Objection to 11 form. 12 A. If this is an area that has 13 had extensive bleeding and disruption, 14 this is a normal response. There, 15 obviously, has been bleeding because 16 there's hemosiderin throughout the 17 tissue. It's hard to make out the full 18 extent of this process from this view and 19 from the exposure. 20 Q. Let's go to the next one, 21 number 71. Can you interpret for me the 22 cluster of dark cells in the pink area? 23 A. There are -- 24 MR. SNELL: I object to the 25 form. Are you -- any particular</p>	<p>1 Q. It shows -- 2 A. Lower magnification. 3 Q. Number 73 shows chronic 4 inflammation? 5 A. Yes. 6 Q. It shows scarring? 7 A. It shows fibrous tissue, 8 yes. 9 Q. Does it show nerve? 10 A. It shows a longitudinal 11 segment of myelinated nerve. 12 Q. Is there mesh fiber shown? 13 A. There are spaces, but I 14 don't believe those are mesh spaces. 15 Q. Why not? 16 A. Because I believe they're 17 too small. I believe that's fat. 18 Q. When you say they're too 19 small, again, you don't whether or not 20 the mesh fibers themselves squeeze or 21 contract? 22 MR. SNELL: Objection. 23 A. They don't change their 24 diameter overall and all the spaces that 25 we have seen which have mesh are much</p>
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<p>1 place you're referencing? 2 MR. MAZIE: There are dark 3 cells. I think he understands 4 what I'm asking. There's an 5 accumulation of the dark cells in 6 the middle to left of the center. 7 THE WITNESS: There are 8 lymphocytes or they appear to be 9 lymphocytes. There may be 10 monocytes in there. It's hard to 11 see whether or not there are 12 macrophages, I think there are a 13 few. There are -- there's, at 14 least, one vessel, possibly 15 represents the same vessel, cut in 16 several planes, but there are 17 vessels adjacent to this cluster 18 of inflammatory cells. 19 BY MR. MAZIE: 20 Q. Let's go to 73, Doctor. 21 A. 73. 22 Q. Yes. Doctor, do you see 23 chronic inflammation on the this slides? 24 A. It's the same picture that 25 we had before. It's the same field.</p>	<p>1 large than those three spaces that we see 2 adjacent to the nerve. 3 Q. Why don't you think they 4 change their overall diameter? 5 A. Because I see no evidence of 6 it. The spaces are relatively the same 7 size or the fibers that one can see with 8 light microscopy, H&amp;E, light microscopy 9 and with polarization show fibers that 10 are of a similar size. 11 Q. You're basing your opinion 12 on the 18 or so slides that you've looked 13 at? 14 MR. SNELL: Object to the 15 form. 16 A. Yes. 17 Q. Okay. You don't know 18 whether and to what extent the mesh 19 fibers contract because you haven't seen 20 most of the mesh fibers within Linda 21 Gross' body or pulled out of her body, 22 correct? 23 MR. SNELL: Objection to 24 form. 25 A. It's irrelevant what's been</p>

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<p>1 pulled out of her body. It's is      2 irrelevant what I haven't seen. What I      3 have seen is clear that the mesh fibers      4 show no evidence of retraction or      5 contraction. The spaces are enlarged.      6 Some are larger than one would      7 anticipate, but that is a technical      8 artifact of dragging with spaces and      9 disrupting the fibers. These spaces that      10 are off to the right, at least from this      11 view, and, obviously, this is showing the      12 whole field, I do not believe are mesh,      13 nor is there any mesh evidence with any      14 mesh fiber that I can see at this      15 magnification within those spaces.</p> <p>16 Q. Doctor, you understand that      17 there is clear testimony from both sides      18 that the mesh contracts within the female      19 body? Do you know that?</p> <p>20 A. Well, there's contraction of      21 scar tissue or fibrous tissue which is      22 recognized with any scar. All scars will      23 retract to some degree. Fibrous tissue,      24 and obviously when one cuts the skin,      25 gets a scar. One knows that scars</p>	<p>1 form.      2 A. Again, I don't know that --      3 that indicates or that implies that the      4 mesh has an active process of contraction      5 independent of what is going on in its      6 implantation site and that's not the      7 case. The mesh is implanted in the      8 tissue. It elicits an inflammatory and      9 fibrous reaction and that fibrous      10 reaction retraction contracts. I have no      11 evidence that the mesh itself is an      12 active participant in that process.</p> <p>13 Q. I understand that. I think      14 we're saying the same thing. So once the      15 mesh is implanted, it interacts with the      16 female tissue; correct?</p> <p>17 A. Well, it interacts with the      18 fibrous tissue that's part of the healing      19 process.</p> <p>20 Q. And then that fibrous tissue      21 causes the mesh itself to contract in      22 size; correct?</p> <p>23 MR. SNELL: Objection.</p> <p>24 A. Potentially, yes.</p> <p>25 Q. Page 75, last one on this.</p>
<p style="text-align: center;">Page 115</p> <p>1 retract or fibrous tissue retract. So      2 that's not unusual. It's not unique. It      3 has nothing to do specifically with the      4 mesh. Its the natural property of the      5 fibrous tissue.</p> <p>6 Q. Listen my question.</p> <p>7 A. I did.</p> <p>8 Q. You understand that it's      9 undisputed that the mesh contracts.</p> <p>10 MR. SNELL: I object to the      11 form. That's actually a      12 misrepresentation.</p> <p>13 A. I don't know that that's the      14 case. It is -- since the mesh is      15 enveloped or surrounded by fibrous tissue      16 that extends through the mesh pores, the      17 process of retraction or contraction is      18 potentially only due to the fibrous      19 tissue healing.</p> <p>20 Q. Either way, whether it's the      21 fibrous tissue causing the contraction or      22 the mesh itself causing the contraction,      23 you understand that the mesh once      24 implanted contracts, correct?</p> <p>25 MR. SNELL: Objection to</p>	<p style="text-align: center;">Page 117</p> <p>1 Doctor, you see a nerve there?</p> <p>2 A. There's a nerve cut across      3 by the -- whatever that disruption is in      4 the picture. But, yes, there's a nerve.</p> <p>5 Q. And there's chronic      6 inflammation near the nerve?</p> <p>7 A. There's chronic inflammation      8 near the nerve, but it's associated with      9 fat.</p> <p>10 Q. Do you see any fibers, mesh      11 fibers?</p> <p>12 A. I do not know what is off to      13 the far left. I don't believe it is, but      14 it possibly could be, but all the      15 remaining spaces are fat tissue, both      16 above the nerve and below the nerve.</p> <p>17 Q. In order to have pain, is it      18 your position you have to have neuritis?</p> <p>19 A. You either have to have      20 neuritis or evidence of disruption,      21 damage to the nerve fiber. Whether the      22 surrounding of nerves by fibrous tissue      23 is sufficient to produce pain is      24 unknowable. There is potential for      25 secretion of irritant materials that</p>

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<p>1 could lead to pain, but there's      2 absolutely no way biologically to      3 determine any one nerve or any group of      4 nerves is the source of a particular pain      5 when you are dealing with nerves of the      6 size. The absence of inflammation, the      7 absence of neuroma formation with the      8 exception of that one that I mentioned      9 earlier, is a normal response of nerves      10 in tissue that is undergoing fibrosis and      11 some degree of inflammation.</p> <p>12 Q. Just so we're clear, you      13 can't tell one way or the other whether      14 fibrosis is causing a nerve to cause      15 pain?</p> <p>16 A. Nobody can.</p> <p>17 Q. Okay. All right. Put that      18 one away. Let's see what else we have      19 here.</p> <p>20 Number 12. Welsh 12, I will      21 ask you to look at a couple of slides      22 here. Number 36, which is the second      23 slide, what do you see there?</p> <p>24 A. I see.</p> <p>25 MR. SNELL: Objection to</p>	<p>1 look at number 8, and look at number 3 on      2 this. Do you see a nerve there?</p> <p>3 A. I do.</p> <p>4 Q. Is it normal or degenerated?</p> <p>5 A. It looks partially torn.</p> <p>6 The portion of it that appears to be      7 unaffected off to the center towards the      8 left appears normal. It looks like there      9 is some disruption of the nerve possibly      10 by a sectioning.</p> <p>11 Q. You can't tell us within a      12 reasonable degree of medical probability      13 as to what disrupted this nerve?</p> <p>14 MR. SNELL: Objection to      15 form.</p> <p>16 A. Well, since only a portion      17 of it is affected and there's no      18 inflammation associated with it and no      19 difference in the fibrosis that's around      20 it, I believe it's due to the sectioning.</p> <p>21 Q. Doctor, what is around the      22 fibrous?</p> <p>23 A. Fibrous tissue and a few      24 inflammatory cells.</p> <p>25 Q. Is there some collagen as</p>
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<p>1 form.</p> <p>2 A. I see a nerve that's been, I      3 assume, inked or surrounded by ink that      4 looks to be irregular and surrounded by      5 fibrous tissue.</p> <p>6 Q. And go to number 47, please.</p> <p>7 A. 47, you said?</p> <p>8 Q. 47. Do you see a nerve      9 there?</p> <p>10 A. There are nerves or there      11 is, at least, one nerve off to the right.      12 I don't know what the tissue is in the      13 center of the field.</p> <p>14 Q. Okay. Can you tell whether      15 the nerve itself is degenerated?</p> <p>16 A. The nerve that I see off to      17 the right is not. I don't know what the      18 remaining tissue is.</p> <p>19 Q. Is the nerve itself imbedded      20 in the fibrosis, the one you see?</p> <p>21 A. Well, there's a space around      22 the nerve, but that's probably      23 retraction. So, yes, the nerve is      24 surrounded by fibrous tissue.</p> <p>25 Q. Put that one away. Let's</p>	<p>1 well?</p> <p>2 A. That's fibrous tissue.</p> <p>3 Collagen is fibrous tissue.</p> <p>4 Q. Let's go to number 4. Does      5 this show a damaged or dying nerve      6 surrounded by collagen?</p> <p>7 MR. SNELL: Objection to      8 form.</p> <p>9 A. It shows a nerve. It's not      10 damaged or dying.</p> <p>11 Q. What do you see?</p> <p>12 A. I see a nerve in three      13 different planes, or two different      14 planes.</p> <p>15 Q. Can you tell whether or not      16 the nerve itself is degenerated?</p> <p>17 A. It does not look      18 degenerated.</p> <p>19 Q. Turn to number 5. Do you      20 see a nerve there?</p> <p>21 A. It's the same nerve, I      22 believe.</p> <p>23 Q. And can you tell whether      24 that nerve is degenerated?</p> <p>25 A. It wasn't degenerated on the</p>

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<p>1      high magnification, so it's not      2      degenerated on this, either. It, also,      3      shows that there's multiple technical      4      artifacts in the tissue immediately      5      around the nerve.</p> <p>6      Q. Number 13, do you see the      7      nerve?</p> <p>8      A. There are three nerves.</p> <p>9      Q. Is there fibrous tissue      10     surrounding the nerves?</p> <p>11     A. Above the nerve, there is      12     fibrous tissue and tearing. And below      13     the nerve, there is fat necrosis.</p> <p>14     Q. Which nerve are you      15     referring to, the one on the right?</p> <p>16     A. I'm referring to all three      17     of the nerves that run, more or less,      18     through the center of the field.</p> <p>19     Q. Turn to number 14. Can you      20     identify for us the circled vessels?</p> <p>21     A. Can I identify them?</p> <p>22     Q. Yes.</p> <p>23     A. One of them is a vessel.      24     The other -- or two of them are vessels.      25     The other are damaged by sectioning.</p>	<p>1      MR. SNELL: So the record --      2      MR. MAZIE: I'm going to do      3      it right now.</p> <p>4      BY MR. MAZIE:</p> <p>5      Q. The ones you say are      6      vessels, there are three circles to the      7      right and it's the middle one?</p> <p>8      A. The middle one is a vessel,      9      but even that is not appropriately cut      10     across in such a way that it can be      11     evaluated. The one to the --</p> <p>12     Q. Left?</p> <p>13     A. -- to the upper left is      14     longitudinal or oblique and it, too,      15     shows smudginess of the lining, the      16     endothelium and cannot be adequately      17     assessed.</p> <p>18     Q. And that drawing, just so      19     we're clear, is the upper left shaped      20     like a pickle?</p> <p>21     A. Or other structures, yes.</p> <p>22     Q. The surrounding tissue,      23     especially in particular in the bottom      24     left quadrant, do we see collagen and      25     fibroblast?</p>
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<p>1      They're tangential and the tissue is not      2      easily seen and, actually, even the other      3      two have the same problem. There's a      4      tangential sectioning, the two vessels      5      that I believe I can recognize in the      6      right center and upper portion.</p> <p>7      Q. So the first on the upper      8      right and the one right below it?</p> <p>9      A. Not the upper right. That      10     one is not -- cannot be evaluated because      11     of its tangential sectioning and      12     destruction of the tissue.</p> <p>13     Q. Can you point?</p> <p>14     A. This one.</p> <p>15     Q. That one cannot be?</p> <p>16     A. No.</p> <p>17     Q. So which one --</p> <p>18     A. So this one is a vessel and      19     this one is a vessel, both of them      20     because of the smudginess of the inner      21     lining, they're not cut appropriately      22     across, so they're difficult to evaluate.</p> <p>23     The other two above and below, and I'm      24     not sure what this is, and this, cannot      25     be evaluated at all.</p>	<p>1      A. I believe there is collagen      2      and there appears to be fibroblast.</p> <p>3      Q. Let's go to number 15. Do      4      you see a damaged vessel there?</p> <p>5      A. It's very difficult to      6      make -- I mean, I believe there's a      7      vessel in the center that's been circled.      8      Again, it's longitudinal. It's not a      9      nice cross-section. So it's difficult to      10     make sense out of it. The lower portion      11     of it is out of focus. So it's hard to      12     know what to make of this.</p> <p>13     Q. Okay. Let me show you the      14     last set which is 10. Let's go to number      15     4. Is there any info -- strike that.</p> <p>16     Is there any information      17     here as to the pore size in vivo?</p> <p>18     MR. SNELL: Objection to      19     form.</p> <p>20     A. No. One can't measure the      21     pore size in fields like this. I mean,      22     one can approximate it because the      23     individual fibers have a certain      24     diameter, but it can't be a precise      25     measurement.</p>

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<p>1 Q. Can you approximate the size 2 of those pores? 3 A. Not without a micrometer or 4 ruler, no. 5 Q. We're here at your 6 deposition. You are not, as to this 7 point, rendering any opinion on the size 8 of any of the pores? 9 MR. SNELL: Objection. 10 A. Correct. 11 Q. Next one, number 5, is it 12 fair to say that on this polarized slide, 13 the white is the mesh that's remaining 14 within this sample? 15 A. The few fibers, yes, or 16 fragments of mesh that are in the sample. 17 Q. Number 6, is that all mesh? 18 MR. SNELL: Objection to 19 form. 20 MR. MAZIE: Strike that. 21 BY MR. MAZIE: 22 Q. Do you see mesh on this? 23 A. Well, I don't 24 specifically -- I see some spaces that I 25 believe are mesh, some of the spaces</p>	<p>1 little bit off to the left and a little 2 bit off to the right. 3 Q. Is the chronic inflammation 4 adjacent to mesh fibers? 5 A. It's in the general vicinity 6 of mesh fibers, yes, but not directly 7 associated with it. 8 Q. Can you tell one way or the 9 other whether the mesh fibers incited any 10 of the chronic inflammation shown on this 11 slide? 12 A. It's part of the process of 13 fibrosis and mesh placement. I'm sure 14 the mesh has some relationship to it, but 15 it's not an obvious one. 16 Q. Do you see any lymphocytes? 17 A. I believe this micro -- this 18 power, which is a low power, the small 19 cells are more likely than not 20 lymphocytes. 21 Q. Okay. You can put that 22 away. Let me see if I have anything else 23 for you. 24 Doctor, do you have an 25 opinion as to whether or not the mesh</p>
<p style="text-align: center;">Page 127</p> <p>1 appear to be tearing of the tissue. I'm 2 not quite sure what several of the other 3 spaces are. They may be vessels in here. 4 It's difficult to tell. 5 Q. Let's go to the next slide, 6 which is polarization. The white stuff, 7 is that all mesh? 8 A. Yes. 9 Q. Let's go to number 10. This 10 slides shows hemosiderin? 11 A. This slide shows hemosiderin 12 and some lymphocytes and a few 13 macrophage. 14 Q. What is shown in the lower 15 quadrant there, lower right quadrant? 16 A. Fibrous tissue. 17 Q. Is there mesh within it? 18 A. There's one space that 19 appears to be a complete mesh fibrous 20 space and another that is an incomplete 21 space. 22 Q. Let's go to number 12. Does 23 this slide show chronic inflammation? 24 A. It shows a few areas of 25 chronic inflammation in the center, a</p>	<p>1 itself migrates or moves? 2 A. I don't have an opinion. 3 MR. MAZIE: That's all I 4 have. Thank you. 5 THE WITNESS: Okay. Thank 6 you. 7 MR. SNELL: I have a couple 8 quick ones. 9 - - - 10 EXAMINATION 11 - - - 12 BY MR. SNELL: 13 Q. Did you see any evidence of 14 degradation? 15 A. No. 16 Q. Plaintiff's counsel asked 17 you some questions about the inflammatory 18 state and chronic inflammation. Do you, 19 in general, recall those questions? 20 A. In general, yes. 21 Q. What do you consider to be 22 chronic inflammation? 23 A. Again, it comes back to what 24 I indicated before. Chronic inflammation 25 refers to a subset of inflammatory cells</p>

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<p>1       that are predominantly lymphocytes,  2       monocytes, macrophages and giant cells,  3       but there's, also, a temporal component  4       and that is, as tissue injury heals,  5       there are inflammatory cells that are  6       associated with the healing process and  7       they, then, persist in the tissue to  8       varying degrees.</p> <p>9       Q. And I believe you identified  10      that Mrs. Gross had chronic inflammation  11      associated with factors other than mesh,  12      is that correct or not?</p> <p>13      A. There were chronic  14      inflammatory cells in a number of  15      different areas of her tissues associated  16      with hemosiderin deposition and -- and/or  17      fat necrosis.</p> <p>18      Q. Has any of the pictures that  19      plaintiffs have showed you today changed  20      any of the opinions that you submitted in  21      your written report in the Gross case?</p> <p>22      A. No.</p> <p>23      Q. Do you hold all those  24      opinions, including the opinions today,  25      to a reasonable degree of medical</p>	<p>1       further scarring often in areas distant  2       from mesh fibers. The entrapment of some  3       nerves and the sclerosis of blood vessels  4       was a result of surgical manipulation of  5       the tissues and cannot be linked to  6       speculative and biologically unsupported  7       effects of the mesh."</p> <p>8       That's what you wrote?</p> <p>9       A. Yes, I did.</p> <p>10      Q. Is that your opinion today  11      as well?</p> <p>12      A. It is.</p> <p>13      MR. SNELL: That's all I  14      have. Thank you.</p> <p>15      MR. MAZIE: Okay.</p> <p>16      VIDEOGRAPHER: The time is  17      now 4:38. This is the end of disk  18      two. This completes today's  19      deposition.</p> <p>20      - - -</p> <p>21      (Whereupon, the videotaped  22      deposition concluded at 4:38  23      p.m.)</p> <p>24      - - -</p>
<p>1       certainty?</p> <p>2       A. I do.</p> <p>3       Q. If I asked questions about  4       the degree of inflammation and Mrs.  5       Gross' inflammatory state, beyond the --  6       beyond what was specifically seen on  7       certain slides, will you, indeed, render  8       such opinions on the nature of her  9       inflammatory state?</p> <p>10      MR. MAZIE: Objection as to  11      form.</p> <p>12      A. Yes.</p> <p>13      Q. In your report at page 5,  14      you state that the inflammatory  15      changes -- on the third paragraph below,  16      "the inflammatory changes were not  17      significant and they were highly  18      variable."</p> <p>19      A. Yes.</p> <p>20      Q. That's an opinion you hold  21      today?</p> <p>22      A. Yes.</p> <p>23      Q. You, also, write, "Her  24      tissues had evidence of fat necrosis and  25      hemorrhage that independently led to</p>	<p>1       C E R T I F I C A T E</p> <p>2</p> <p>3       I HEREBY CERTIFY that the  4       witness was duly sworn by me and that the  5       deposition is a true record of the  6       testimony given by the witness.</p> <p>7</p> <p>8</p> <p>9       -----  10      Margaret Peoples, RPR  11      Dated: November 27,2012</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19       (The foregoing certification  20       of this transcript does not apply to any  21       reproduction of the same by any means,  22       unless under the direct control and/or  23       supervision of the certifying reporter.)</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 134</p> <p>1           <b>INSTRUCTIONS TO WITNESS</b></p> <p>2       Please read your deposition over</p> <p>3       carefully and make any necessary changes.</p> <p>4       You should assign a reason in the</p> <p>5       appropriate column on the errata sheet</p> <p>6       for any change made.</p> <p>7       After making any change which has</p> <p>8       been noted on the following errata sheet,</p> <p>9       along with the reason for any change,</p> <p>10      sign your name to the errata sheet and</p> <p>11      date it.</p> <p>12      You are signing it subject to the</p> <p>13      changes you have made in the errata</p> <p>14      sheet, which will be attached to the</p> <p>15      deposition. You must sign in the space</p> <p>16      provided.</p> <p>17      Return the original errata sheet</p> <p>18      to the deposing attorney within thirty</p> <p>19      (30) days of receipt of the transcript by</p> <p>20      you.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 136</p> <p>1           <b>ACKNOWLEDGMENT OF DEPONENT</b></p> <p>2       I, _____, do</p> <p>3       hereby certify that I have read the</p> <p>4       foregoing pages, 1 through 135 and that</p> <p>5       the same is a correct transcription of</p> <p>6       the answers given by me to the questions</p> <p>7       therein propounded, except for the</p> <p>8       corrections or changes in form or</p> <p>9       substance, if any, noted in the attached</p> <p>10      Errata Sheet.</p> <p>11</p> <p>12      STEPHEN M. FACTOR, M.D.     DATE</p> <p>13</p> <p>14      Subscribed and sworn to before me this</p> <p>15      _____ day of _____,</p> <p>16      20 _____. My commission expires: _____</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21      Notary Public</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																								
<p style="text-align: right;">Page 135</p> <p>1       -----</p> <p>2       <b>E R R A T A</b></p> <p>3       -----</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding-bottom: 5px;">4       PAGE</th> <th style="text-align: left; padding-bottom: 5px;">5       LINE</th> <th style="text-align: left; padding-bottom: 5px;">6       CHANGE/REASON</th> </tr> </thead> <tbody> <tr><td>7       _____</td><td>8       _____</td><td>9       _____</td></tr> <tr><td>10      _____</td><td>11      _____</td><td>12      _____</td></tr> <tr><td>13      _____</td><td>14      _____</td><td>15      _____</td></tr> <tr><td>16      _____</td><td>17      _____</td><td>18      _____</td></tr> <tr><td>19      _____</td><td>20      _____</td><td>21      _____</td></tr> <tr><td>22      _____</td><td>23      _____</td><td>24      _____</td></tr> <tr><td>25      _____</td><td></td><td></td></tr> </tbody> </table>	4       PAGE	5       LINE	6       CHANGE/REASON	7       _____	8       _____	9       _____	10      _____	11      _____	12      _____	13      _____	14      _____	15      _____	16      _____	17      _____	18      _____	19      _____	20      _____	21      _____	22      _____	23      _____	24      _____	25      _____			
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